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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No.

ATLANTIC COAST LINE RAILROAD COMPANY,
PETITIONER,

vs.

SARAH ELIZABETH STRINGFELLOW, A WIDOW,
AND AS ADMINISTRATRIX, ETC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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[fol. 1]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA, TAMPA DIVISION

No. 2730

SARAH ELIZABETH STRINGFELLOW, as Administratrix of the Estate of Hazel Stringfellow, Deceased, Plaintiff,

v.

ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Defendant

No. 2731

SARAH ELIZABETH STRINGFELLOW, a Widow, Plaintiff,

v.

ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Defendant

No. 2732

SARAH ELIZABETH STRINGFELLOW, a Widow, Plaintiff,

v.

ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Defendant

[fol. 2]

No. 2733

SARAH ELIZABETH STRINGFELLOW, a Widow, Plaintiff,

v.

ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Defendant

No. 2734

SARAH ELIZABETH STRINGFELLOW, as Administratrix of the Estate of Jack H. Stringfellow, Deceased, Plaintiff,

v.

ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Defendant

Cases Nos. 2731, 2732, 2733 and 2734 were consolidated for trial with Case No. 2730, by order of the District Court, on February 2, 1932.

[fol. 3] IN UNITED STATES DISTRICT COURT

No. 2730

[Title omitted]

Civil Action. Damages: $15,000.00

AMENDED DECLARATION: FILED MAY 25, 1931

Plaintiff, Sarah Elizabeth Stringfellow, as administratrix of the estate of Hazel Stringfellow, deceased, by her attorneys Campbell & McLean, sues the Atlantic Coast Line Railroad Company, a corporation who has summoned to answer the plaintiff in a civil action for damages.

First Count

(1) Plaintiff is a resident and citizen of Pinellas County, Florida, and the defendant, Atlantic Coast Line Railroad, Company, is a corporation chartered under the laws of the state of Virginia, and owns and/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and in and through the incorporated City of Dunedin, Pinellas County, Florida, and receives and transports passenters and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is [fol. 4] a public thoroughfare running east and west and the tracks of said Railroad Company, running north and south, cross said street at right angles thereto; that said Scotland Street is used constantly and habitually by pedestrians and those travelling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said railroad crossing is a populous section of said City, and is constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day of March, 1931, at about the hour of six o'clock P. M., the said Hazel Stringfellow was riding in an

automobile which was being driven by her father, Guy Stringfellow, along said Scotland Street, going in an easterly direction at a point on said Scotland Street where the railroad tracks of the defendant Company and said Scotland Street intersect and cross, and that at the said time and place the defendant Railroad Company, carelessly and negligently propelled and ran its train, against and upon the said automobile in which said deceased was riding aforesaid, and upon said Hazel Stringfellow, deceased, with great force and violence, whereby deceased was then and there, by said negligence and carelessness of the defendant, killed; and that said Hazel Stringfellow died leaving neither husband nor minor child or children, nor person or persons dependent upon her, the said Hazel Stringfellow, for support; that the said Sarah Elizabeth Stringfellow, plaintiff, was on, to-wit: March 25th, 1931, duly appointed as administratrix of the estate of the said Hazel Stringfellow, deceased; and plaintiff alleges that by reason of the premises she is entitled to recover of and from said defendant the pecuniary value of the prospective earnings and savings that the said deceased could reasonably have expected but for the death of said deceased, to the damage of the plaintiff in the sum of $15,000.00.

[fol. 5] Wherefore plaintiff sues and demands judgment for damages of every kind and character which may lawfully be recovered under this action against said defendant and claims damages in the sum of $15,000.00.

Second Count

(1) Plaintiff is a resident and citizen of Pinellas County, Florida, and the defendant, Atlantic Coast Line Railroad Company, is a corporation chartered under the laws of the State of Virginia, and owns and/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and running in and through said County of Pinellas, and State of Florida, and in and through the incorporated City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad Company, running North and South, cross said street at right angles thereto; that said Scotland Street is used constantly and habitually by pedestrians and those travelling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said railroad crossing is a populous section of said City, and is constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day [fol. 6] of March, 1931, at about the hour of six o'clock, P. M., the said Hazel Stringfellow was riding in an automobile which was being driven by her father, Guy Stringfellow, along said Scotland Street, going in an easterly direction at a point on said Scotland Street, where the railroad tracks of the defendant Company and said Scotland Street intersect and cross, and that at said time and place the said Hazel Stringfellow was struck and killed by said Railroad Company's north bound passenger train No. 132, and that no alarm or warning of any kind was given of the approach of said train either by the ringing of its bell or the blowing of its whistle and said train was being run at a high and dangerous rate of speed and the plaintiff alleges that the speed of said train and the failure of the defendant to give warning of its approach either by the blowing of the whistle or the ringing of the bell at the time, place and under the circumstances, was negligence. And the plaintiff avers that by reason of said negligence of the defendant the said Hazel Stringfellow was killed; and that said Hazel Stringfellow died leaving neither husband nor minor child or children, nor any person or persons dependent upon her, the said Hazel Stringfellow, for a support; that the said Sarah Elizabeth Stringfellow, plaintiff, was on, to-wit: March 25, 1931, duly appointed as administratrix of the estate of the said Hazel Stringfellow, deceased; and plaintiff alleges that by reason of the premises she is entitled to recover of and from said defendant the pecuniary value of the prospective earnings and savings

that the said deceased could reasonably have expected but for the death of said deceased, to the damage of the plaintiff in the sum of $15,000.00.

Wherefore plaintiff sues and demands judgment for damages of every kind and character which may lawfully be recovered under this action against said defendant and claims damages in the sum of $15,000.00.

[fol. 7] Third Count

(1) Plaintiff is a resident and citizen of Pinellas County, Florida, and the defendant, Atlantic Coast Line Railroad Company, is a corporation chartered under the laws of the State of Virginia, and owns and/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and running in and through said County of Pinellas, and State of Florida, and in and through the incorporated City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad Company, running north and south, cross said street at right angles thereto; that said Scotland Street is used constantly and habitually by pedestrians and those travelling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said railroad crossing is a populous section of said City, and is constantly and habitually used by people in crossing and recrossing said Railroad tracks; that on the 9th of March, 1931, at about the hour of six o'clock, P. M., the said Hazel Stringfellow was riding in an automobile which was being driven by her father, Guy Stringfellow, along said Scotland Street, going in an easterly direction at a point on said Scotland Street where the railroad tracks of the defendant

Company and said Scotland Street intersect and cross and that at said time and place the said Hazel Stringfellow was killed by said Railroad Company's north bound passenger [fol. 8] train No. 132, said train being run at a high rate of speed over said Scotland Street, crossing, and that if warning signals were given by said train, the speed of said train rendered such warning signals unavailing and useless to one approaching said crossing in an easterly direction along said street as the view of the tracks of said railroad were so obstructed as to render the approach to said tracks dangerous, which fact was known to said defendant or could have been known by it in the exercise of reasonable diligence, and the plaintiff alleges that the speed of said train at the time, place and under the circumstances constituted negligence. And the plaintiff avers that by reason of said negligence of the defendant the said Hazel Stringfellow was killed; and that said Hazel Stringfellow died leaving neither husband nor minor child or children, nor any person or persons dependent upon her, the said Hazel Stringfellow, for a support; that the said Sarah Elizabeth Stringfellow, plaintiff, was on, to-wit: March 25th, 1931, duly appointed as Administratrix of the estate of the said Hazel Stringfellow, deceased; and plaintiff alleges that by reason of the premises she is entitled to recover of and from said defendant the pecuniary value of the prospective earnings and savings that the said deceased could reasonably have expected but for the death of said deceased, to the damage of the plaintiff in the sum of $15,000.00.

Wherefore plaintiff sues and demands judgment for damages of every kind and character which may lawfully be recovered under this action against said defendant and claims damages in the sum of $15,000.00.

Fourth Count

(1) Plaintiff is a resident and citizen of Pinellas County, Florida, and the defendant, Atlantic Coast Line Railroad Company, is a corporation chartered under the laws of the State of Virginia, and owns and/or operates a railroad, [fol. 9] tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jack-

sonville, Florida, and running in and through the incorporated City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad Company, running north and south, cross said street at right angles thereto; that said Scotland Street is used constantly and habitually by pedestrians and those traveling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said railroad crossing is a populous section of said city, and is constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day of March, 1931, at about the hour of six o'clock P. M., the said Hazel Stringfellow was riding in an automobile which was being driven by her father, Guy Stringfellow, along said Scotland Street, going in an easterly direction at a point on said Scotland Street where the railroad tracks of the defendant Company and said Scotland Street intersect and cross and that at said time and place the said Hazel Stringfellow was killed by said Railroad company's north bound passenger train No. 132, said train being run at a high rate of speed over said Scotland Street crossing; that at the time aforesaid there was a strong wind blowing from the northwest which was known to said defendant, or could have been known to a person in possession of his ordinary faculties and the sound of the approaching train and warnings of its approach, if any, were obstructed by the wind to one approaching said crossing while travelling [fol. 10] in an easterly direction along said street and that in approaching said railroad tracks in an easterly direction along said Scotland Street, intervening objects prevent the view of an approaching train from the south until within a few feet of the tracks of said railroad, and that at said time and place the said defendant failed to exercise such care, prudence and caution as the circumstances of said crossing reasonably demanded of it in that said train

approached and passed over said crossing at a high rate of speed and failed to give suitable and proper warning of its approach and that it was the duty of said defendant to warn by appropriate signals all persons who may have been upon said Scotland Street of the approach of said train, and the said defendant failed to use such ordinary precaution as the exergencies of the circumstances required, to warn all persons who might have been upon said Scotland Street near said railroad crossing and that the failure of said defendant to observe this duty which it owed to the public in general and to the said deceased, was negligence and such failure was the proximate cause of the injury and death of the said Hazel Stringfellow. And the plaintiff avers that by reason of said negligence of the defendant the said Hazel Stringfellow was killed; and that said Hazel Stringfellow died leaving neither husband nor minor child or children, nor any person or persons dependent upon her, the said Hazel Stringfellow, for a support; that the said Sarah Elizabeth Stringfellow, plaintiff, was on, to-wit: March 25th, 1931, duly appointed as administratrix of the estate of the said Hazel Stringfellow, deceased; and plaintiff alleges that by reason of the premises she is entitled to recover of and from said defendant the pecuniary value of the prospective earnings and savings that the deceased could reasonably have expected but for the death of said deceased, to the damage of the plaintiff in the sum of $15,000.00.

[fol. 11] Wherefore plaintiff sues and demands judgment for damages of every kind and character which may lawfully be recovered under this action against said defendant and claims damages in the sum of $15,000.00.

Fifth Count

(1) Plaintiff is a resident and citizen of Pinellas County, Florida, and the defendant, Atlantic Coast Line Railroad Company, is a corporation chartered under the laws of the State of Virginia, and owns and/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and running in and through the incorporated City

of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad Company, running north and south, cross said street at right angles thereto; that said Scotland Street is used constantly and habitually by pedestrians and those travelling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said railroad crossing is a populous section of said City, and is constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day of March, 1931, at about the hour of six o'clock P. M., the said Hazel Stringfellow was riding in an automobile which was being driven by her father, Guy Stringfellow, along said Scotland Street, going in an easterly direction at a point on said Scotland Street where the railroad tracks — [fol. 12] defendant Company and said Scotland Street intersect and cross and that at said time and place the said Hazel Stringfellow was killed by said Railroad Company's north bound passenger train No. 132, said train being run at a high rate of speed over said Scotland Street crossing; and plaintiff further avers that said defendant, Railroad Company, had been in the habit of, and had generally and customarily been, running said engine and train of cars in and through the incorporated City of Dunedin and over said crossing, at a high, reckless and dangerous rate of speed, in flagrant violation of the rights of persons who may have been upon said Scotland Street and the said defendant could reasonably have foreseen or contemplated that the running of said train in and through the said City of Dunedin and over and across said Scotland Street at an excessive rate of speed, considering the ordinary conditions of human activities in said City of Dunedin at said crossing, would probably result in an injury to persons lawfully upon said street, and that the excessive rate of speed of said train in and through said City of Dunedin

and over and across said Scotland Street at the time aforesaid, constituted negligence. And the plaintiff avers that by reason of said negligence of the defendant the said Hazel Stringfellow was killed; and that said Hazel Stringfellow died leaving neither husband nor minor child or children, nor any person or persons dependent upon her, the said Hazel Stringfellow, for a support; that the said Sarah Elizabeth Stringfellow, plaintiff, was on, to-wit: March 25th, 1931, duly appointed as administratrix of the estate of the said Hazel Stringfellow, deceased, and plaintiff alleges that by reason of the premises she is entitled to recover of and from said defendant the pecuniary value of the prospective earnings and savings that the said deceased could reasonably have expected but for the death of said deceased, to the damage of the plaintiff in the sum of $15,000.00.

[fol. 13] Wherefore plaintiff sues and demands judgment for damages of every kind and character which may lawfully be recovered under this action against said defendant and claims damages in the sum of $15,000.00.

Campbell & McLean, by Wm. C. McLean, Attorneys for Plaintiff.

[fol. 14] IN UNITED STATES DISTRICT COURT

No. 2730-T

[Title omitted]

PLEA—Filed July 6, 1931

Now comes the Defendant, Atlantic Coast Line Railroad Company, a Corporation, in the above-entitled cause, by its undersigned attorneys, and for Plea to Plaintiff's Declaration, and each count thereof, filed in said cause, says:

1. That it is not guilty.

Jas. R. Bussey, Sam H. Mann, Jr., McKinney Barton, Attorneys for Defendant.

Duly sworn to by McKinney Barton. Jurat omitted in printing.

[fol. 15] IN UNITED STATES DISTRICT COURT

No. 2731

[Title omitted]

Civil Action. Damages: $25,000.00

AMENDED DECLARATION—Filed May 25, 1931

Plaintiff, Sarah Elizabeth Stringfellow, a widow by her attorneys, Campbell & McLean, sues the Atlantic Coast Line Railroad Company, a corporation, herein, who has been summoned to answer the plaintiff in a civil action for damages.

First Count.

Plaintiff is a resident of Pinellas County, Florida, and the widow of Guy Stringfellow, deceased and the mother of Hazel Stringfellow, deceased, a minor child, whose father Guy Stringfellow is deceased, and the defendant, Atlantic Coast Line Railroad Company, is a corporation chartered under the laws of the State of Virginia, and owns [fol. 16] and/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and running in and through said County of Pinellas, and State of Florida, and in and through the incorporated City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad Company, running north and south, cross said street at right angles thereto; that said Scotland Street is used constantly and habitually by pedestrians and those travelling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said railroad crossing is a populous section of said City, and is constantly and habitually used by people in crossing and re-

crossing said railroad tracks; that on the 9th day of March, 1931, at about the hour of six o'clock P. M., the said Hazel Stringfellow was riding in an automobile which was being driven by her father, Guy Stringfellow, along said Scotland Street, going in an easterly direction at a point on said Scotland Street where the railroad tracks of the defendant Company and said Scotland Street intersect and cross, and that at the said time and place the defendant Railroad Company, carelessly and negligently propelled and ran its train, against and upon the said automobile in which said deceased was riding aforesaid, and upon said Hazel Stringfellow, deceased, with great force and violence, whereby deceased was then and there, by said negligence and carelessness of the defendant killed; and plaintiff alleges that by reason of the premises she is entitled to recover of and from said defendant damages for the loss of [fol. 17] services of such minor child and also for the mental pain and suffering of plaintiff resulting from the injury and death of said minor child, to the damage of the plaintiff in the sum of $25,000.00.

Wherefore plaintiff sues and demands judgment for damages of every kind and character which may lawfully be recovered under this action against said defendant and claims damages in the sum of $25,000.00.

Second Count

(1) Plaintiff is a resident of Pinellas County, Florida, and the widow of Guy Stringfellow, deceased and the mother of Hazel Stringfellow, deceased, a minor child, whose father, Guy Stringfellow is deceased, and the defendant, Atlantic Coast Line Railroad Company, is a corporation chartered under the laws of the State of Virginia, and owns and/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and running in and through said County of Pinellas, and State of Florida, and in and through the incorporated City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Rail-

road Company in and through the said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad Company, running north and south, cross said street at right angles thereto; that said Scotland street is used constantly and habitually by pedestrains and those travelling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said railroad crossing is a populous section of said city and is constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day of March, 1931, at about the hour of six o'clock P. M., the said Hazel Stringfellow was riding in an automobile which was [fol. 18] being driven by her father, Guy Stringfellow, along said Scotland street, going in an easterly direction at a point on said Scotland Street, where the railroad tracks of the defendant Company and said Scotland Street intersect and cross, and that at said time and place the said Hazel Stringfellow was struck and killed by said Railroad Company's north bound passenger train No. 132, and that no alarm or warning of any kind was given of the approach of said train either by the ringing of its bell or the blowing of its whistle and said train was being run at a high and dangerous rate of speed and the plaintiff alleges that the speed of said train and the failure of the defendant to give warning of its approach either by the blowing of the whistle or the ringing of the bell at the time, place and under the circumstances, was negligence. And the plaintiff avers that by reason of said negligence of the defendant the said Hazel Stringfellow was killed; and plaintiff alleges that by reason of the premises she is entitled to recover of and from said defendant, damages for the loss of services of such minor child and also for the mental pain and suffering of plaintiff resulting from the injury and death of said minor child, to the damage of the plaintiff in the sum of $25,000.00.

Wherefore plaintiff sues and demands judgment for damages of every kind and character which may lawfully be recovered under this action against said defendant and claims damages in the sum of $25,000.00.

Third Count

(1) Plaintiff is a resident of Pinellas County, Florida, and the widow of Guy Stringfellow, deceased, and the mother of Hazel Stringfellow, deceased, a minor child, whose father Guy Stringfellow is deceased, and the defendant, Atlantic Coast Line Railroad Company is a corporation chartered under the laws of the State of Virginia, and owns and/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Peters- [fol. 19] burg, Florida, to Jacksonville, Florida, and running in and through said County of Pinellas, and State of Florida, and in and through the incorporated City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad Company, running north and south, cross said street at right angles thereto; that said Scotland Street is used constantly and habitually by pedestrains and those travelling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said railroad crossing is a populous section of said City, and is constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day of March, 1931, at about the hour of six o'clock, P. M., the said Hazel Stringfellow was riding in an automobile which was being driven by her father, Guy Stringfellow, along said Scotland Street, going in and easterly direction at a point on said Scotland Street where the railroad tracks of the defendant Company and said Scotland Street intersect and cross and that at said time and place the said Hazel Stringfellow was killed by said Railroad Company's north bound passenger train No. 132, said train being run at a high rate of speed over said Scotland Street crossing, and that if warning signals were given by said train, the speed of said train rendered such warning signals unavailing and

useless to one approaching said crossing in an easterly direction along said street as the view of the tracks of said railroad were so obstructed as to render the approach to said tracks dangerous, which fact was known to said de-
[fol. 20] fendant or could have been known by it in the exercise of reasonable diligence, and the plaintiff alleges that the speed of said train at the time, place and under the circumstances constituted negligence. And the plaintiff avers that by reason of said negligence of the defendant the said Hazel Stringfellow was killed; and plaintiff alleges that by reason of the premises she is entitled to recover of and from said defendant damages for the loss of services of such minor child and also for the mental pain and suffering of plaintiff resulting from the injury and death of said minor child, to the damage of the plaintiff in the sum of $25,000.00.

Wherefore plaintiff sues and demands judgment for damages of every kind and character which may lawfully be recovered under this action against said defendant and claims damages in the sum of $25,000.00.

Fourth Count

(1) Plaintiff is a resident of Pinellas County, Florida, and the widow of Guy Stringfellow, deceased, and the mother of Hazel Stringfellow, deceased, a minor child, whose father Guy Stringfellow is deceased, and the defendant, Atlantic Coast Line Railroad Company is a corporation chartered under the laws of the State of Virginia, and owns and/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and running in and through the incorporated City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Rail-
[fol. 21] road Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and

the tracks of said Railroad Company, running north and south, cross said street at right angles thereto; that said Scotland street is used constantly and habitually by pedestrians and those travelling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said railroad crossing is a populous section of said City, and is constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day of March, 1931, at about the hour of six o'clock P. M., the said Hazel Stringfellow was riding in an automobile which was being driven by her father, Guy Stringfellow, along said Scotland Street, going in an easterly direction at a point on said Scotland Street, where the railroad tracks of the defendant Company and said Scotland Street intersect and cross and that at said time and place the said Hazel Stringfellow was killed by the Railroad Company's north bound passenger train No. 132, said train being run at a high rate of speed over said Scotland Street crossing; that at the time aforesaid there was a strong wind blowing from the northwest which was known to said defendant, or could have been known to a person in possession of his ordinary faculties and the sound of the approaching train and warnings of its approach, if any, were obstrueted by the wind to one approaching said crossing while travelling in an easterly direction along said street and that in approaching said railroad tracks in an easterly direction along said Scotland Street intervening objects prevent the view of an approaching train from the south until within a few feet of the tracks of said railroad, and that at said time and place the said defendant failed to exercise such care, prudence and caution as the circumstances of said crossing reasonably demanded of it in that said train approached and [fol. 22] passed over said crossing at a high rate of speed and failed to give suitable and proper warning of its approach and that it was the duty of said defendant to warn by appropriate signals all persons who may have been upon said Scotland Street of the approach of said train, and the said defendant failed to use such ordinary precaution as the exigencies of the circumstances required, to warn all persons who might have been upon said Scotland Street near said railroad crossing and that the failure of said defendant to observe this duty which it owed to the public in general and to the said deceased, was negligence and such

failure was the proximate cause of the injury and death of the said Hazel Stringfellow. And the plaintiff avers that by reason of said negligence of the defendant the said Hazel Stringfellow was killed; and the plaintiff alleges that by reason of the premises she is entitled to recover of and from said defendant damages for the loss of services of such minor child and also for the mental pain and suffering of plaintiff resulting from the injury and death of said minor child, to the damage of plaintiff in the sum of $25,000.00.

Wherefore plaintiff sues and demands judgment for damages of every kind and character which may lawfully be recovered under this action against said defendant and claims damages in the sum of $25,000.00.

Fifth Count

(1) Plaintiff is a resident of Pinellas County, Florida, and the widow of Guy Stringfellow, deceased, and the mother of Hazel Stringfellow, deceased, a minor child, whose father Guy Stringfellow is deceased, and the defendant, Atlantic Coast Line Railroad Company, is a corporation chartered under the laws of the State of Virginia, and owns and/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurtenances and oper- [fol. 23] ates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and running in and through the incorporated City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad company, running north and south, cross said street at right angles thereto; that said Scotland street is used constantly and habitually by pedestrians and those travelling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said railroad crossing is a populous section of said City, and is

constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day of March, 1931, at about the hour of six o'clock P. M., the said Hazel Stringfellow was riding in an automobile which was being driven by her father, Guy Stringfellow, along said Scotland Street, going in an easterly direction, at a point on said Scotland Street where the railroad tracks of the defendant Company and said Scotland Street intersect and cross and that at said time and place the said Hazel Stringfellow was killed by said Railroad Company's north bound passenger train No. 132, said train being run at a high rate of speed over said Scotland Street crossing; and plaintiff further avers that said defendant, Railroad Company had been in the habit of, and had generally and customarily been, running said engine and train of cars, in and through the incorporated City of Dunedin and over said crossing, at a high, reckless and dangerous rate of speed, in flagrant violation of the rights of persons who may have been upon said Scotland Street, and the said defendant [fol. 24] could reasonably have foreseen or contemplated that the running of said train in and through the said City of Dunedin and over and across said Scotland Street at an excessive rate of speed, considering the ordinary conditions of human activities in said City of Dunedin at said crossing, would probably result in an injury to persons lawfully upon said street and that the excessive rate of speed of said train in and through said City of Dunedin and over and across said Scotland Street at the time aforesaid, constituted negligence. And the plaintiff avers that by reason of said negligence, of the defendant, the said Hazel Stringfellow was killed; and the plaintiff alleges that by reason of the premises she is entitled to recover of and from said defendant damages for the loss of services of such minor child and also for the mental pain and suffering of plaintiff resulting from the injury and death of said minor child, to the damage of the plaintiff in the sum of $25,000.00.

Wherefore plaintiff sues and demands judgment for damages of every kind and character which may lawfully be recovered under this action against said defendant and claims damages in the sum of $25,000.00.

Campbell & McLean, by Wm. C. McLean, Attorneys for Plaintiff.

[fol. 25] IN UNITED STATES DISTRICT COURT

No. 2731-T

[Title omitted]

PLEA—Filed July 6, 1931

Now comes the Defendant, Atlantic Coast Line Railroad Company, a Corporation, in the above-entitled cause, by its undersigned attorneys, and for Plea to the Plaintiff's declaration, and each Count thereof, filed in said cause, says:

1. That it is not guilty.

Jas. R. Bussey, Sam H. Mann, Jr., McKinney Barton, Attorneys for Defendant.

Duly sworn to by McKinney Barton. Jurat omitted in printing.

[fol. 26] IN UNITED STATES DISTRICT COURT

No. 2732

[Title omitted]

Civil Action. Damages: $25,000.00

AMENDED DECLARATION—Filed May 25, 1931

Plaintiff, Sarah Elizabeth Stringfellow, a widow, by her attorneys, Campbell & McLean, sues the Altantic Coast Line Railroad Company, a corporation, defendant herein, who has been summoned to answer the plaintiff in a civil action for damages.

First Count

(1) Plaintiff is a resident of Pinellas County, Florida, and the widow of Guy Stringfellow, deceased, and the mother of Jack H. Strngfellow, deceased, a minor child, whose father, Guy Stringfellow is deceased, and the defendant, Atlantic Coast Line Railroad Company, is a corporation chartered under the laws of the State of Virginia,

and own and/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. [fol. 27] Petersburg, Florida to Jacksonville, Florida, and running in and through said County of Pinellas, and State of Florida, and in and through the incorporated City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad Company, running North and south cross said street at right angles thereto; that said Scotland Street is used constantly and habitually by pedestrians and those travelling in conveyances of all kinds, and is one of the main thoroughfares of said City, and is constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day of March, 1931, at about the hour of six o'clock, P. M., the said Jack H. Stringfellow was riding in an automobile which was being driven by his father, Guy Stringfellow, along said Scotland Street, going in an easterly direction at a point on said Scotland Street where the railroad tracks of the defendant Company and said Scotland Street intersect and cross, and that at the said time and place the defendant Railroad Company, carelessly and negligently propelled and ran its train, against and upon the said automobile in which said deceased was riding, aforesaid, and upon said Jack H. Stringfellow, deceased, with great force and violence, whereby deceased was then and there, by said negligence and carelessness of the defendant, fatally injured and from such injuries died on, to-wit: March 24th, 1931; and plaintiff alleges that by reason of the premises she is entitled to recover of and from said [fol. 28] defendant damages for the loss of services of such minor child and also for the mental pain and suffering of plaintiff resulting from the injury and death of said minor child, to the damage of the plaintiff in the sum of $25,000.00.

Wherefore plaintiff sues and demands judgment for damages of every kind and character which may lawfully be recovered under this action against said defendant and claims damages in the sum of $25,000.00.

Second Count

(2) Plaintiff is a resident of Pinellas County, Florida, and the widow of Guy Stringfellow, deceased, and the mother of Jack H. Stringfellow, deceased, a minor child, whose father, Guy Strongfellow is deceased, and the defendant, Atlantic Coast Line Railroad Company, is a corporation chartered under the laws of the State of Virginia, and owns and/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and running in and through said County of Pinellas, and State of Florida, and in and through the incorporated City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin, and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad Company, running north and south, cross said street at right angles thereto; that said Scotland street is used constantly and habitually by pedestrians and those travelling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said railroad crossing is a populous section [fol. 29] of said City, and is constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day of March, 1931; at about the hour of six o'clock, P. M., the said Jack H. Stringfellow was riding in an automobile which was being driven by his father, Guy Stringfellow, along said Scotland Street, going in an easterly direction at a point on said Scotland Street where the railroad tracks of the defendant Company and said Scotland Street intersect and cross, and that at said time and place the said Jack H. Stringfellow

was struck and fatally injured by said Railroad Company's north bound passenger train No. 132, and that no alarm or warning of any kind was given of the approach of said train either by the ringing of its bell or the blowing of its whistle and said train was being run at a high and dangerous rate of speed and the plaintiff alleges that the speed of said train and the failure of the defendant to give warning of its approach either by the blowing of the whistle or the ringing of the bell at the time, place and under the circumstances, was negligence. And the plaintiff avers that by reason of said negligence of the defendant the said Jack H. Stringfellow was fatally injured and from such injuries died on, to-wit: March 24th, 1931; and plaintiff alleges that by reason of the premises she is entitled to recover of and from said defendant damages for the loss of services of such minor child and also for the mental pain and suffering of plaintiff resulting from the injury and death of said minor child, to the damage of the plaintiff in the sum of $25,000.00.

Wherefore plaintiff sues and demands judgment for damages of every kind and character which may lawfully be recovered under this action against said defendant and claims damages in the sum of $25,000.00.

Third Count

(1) Plaintiff is a resident of Pinellas County, Florida, and the widow of Guy Stringfellow, deceased, and the [fol. 30] mother of Jack H. Stringfellow, deceased, a minor child, whose father, Guy Stringfellow is deceased, and the defendant, Atlantic Coast Line Railroad Company, is a corporation chartered under the laws of the State of Virginia, and owns and/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and running in and through said County of Pinellas, and State of Florida, and in and through the incorporated City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Rail-

road Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad Company, running north and south, cross said Street at right angles thereto; that said Scotland Street is used constantly and habitually by pedestrians and those travelling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said railroad crossing is a populous section of said City, and is constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day of March, 1931, at about the hour of six o'clock P. M., the said Jack H. Stringfellow was riding in an automobile which was being driven by his father Guy Stringfellow along said Scotland Street, going in an easterly direction at a point on said Scotland Street where the railroad tracks of the defendant Company and said Scotland Street intersect and cross and that at said time and place the said Jack H. Stringfellow was struck and fatally injured by said Railroad Company's north bound Passenger train No. 132, [fol. 31] said train being run at a high rate of speed over said Scotland Street crossing, and that if warning signals were given by said train, the speed of said train rendered such warning signals unavailing and useless to one approaching said crossing in an easterly direction along said street as the view of the tracks of said railroad were so obstructed as to render the approach to said tracks dangerous, which fact was known to said defendant or could have been known by it in the exercise of reasonable diligence, and the plaintiff alleges that the speed of said train at the time, place and under the circumstances constituted negligence. And the plaintiff avers that by reason of said negligence of the defendant the said Jack H. Stringfellow was fatally injured and from such injuries dies on, to-wit: March 24th, 1931; and plaintiff alleges that by reason of the premises she is entitled to recover of and from said defendant damages for the loss of services of such minor child and also for the mental pain and suffering of plaintiff resulting from the injury and death of said minor child, to the damage of the plaintiff in the sum of $25,000.00.

Wherefore plaintiff sues and demands judgment for damages of every kind and character which may lawfully be re-

covered under this action against said defendant and claims damages in the sum of $25,000.00.

Fourth Count

(1) Plaintiff is a resident of Pinellas County, Florida, and the widow of Guy Stringfellow, deceased, and the mother of Jack H. Stringfellow, deceased, a minor child, whose father Guy Stringfellow is deceased, and the defendant, Atlantic Coast Line Railroad Company, is a corporation chartered under the laws of the State of Virginia, and owns and/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. [fol. 32] Petersburg, Florida, to Jacksonville, Florida, and running in and through the incorporated City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad Company, running north and south, cross said street at right angles thereto; that said Scotland Street is used constantly and habitually by pedestrians and those travelling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said railroad crossing is a populous section of said City, and is constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day of March, 1931, at about the hour of six o'clock, P. M., the said Jack H. Stringfellow was riding in an automobile which was being driven by his father, Guy Stringfellow along said Scotland Street, going in an easterly direction at a point on said Scotland Street where the railroad tracks of the defendant Company and said Scotland Street intersect and cross and that at said time and place the said Jack H. Stringfellow was struck and fatally injured by said Railroad Company's north bound passenger train No. 132, said train being run at a high rate of speed over said Scotland Street crossing; that at the time aforesaid there was a

strong wind blowing from the northwest which was known to said defendant, or could have been known to a person in possession of his ordinary faculties and the sound of the approaching train and warnings of its approach, if any, were obstructed by the wind to one approaching said crossing while travelling in an easterly direction along said [fol. 33] street and that in approaching said railroad tracks in an easterly direction along said Scotland Street intervening objects prevent the view of an approaching train from the south until within a few feet of the tracks of said railroad and that at said time and place the said defendant failed to exercise such care, prudence and caution as the circumstances of said crossing reasonably demanded of it in that said train approached and passed over said crossing at a high rate of speed and failed to give suitable and proper warning of its approach and that it was the duty of said defendant to warn by appropriate signals all persons who may have been upon said Scotland Street of the approach of said train, and the said defendant failed to use such ordinary precaution as the exergencies of the circumstances required, to warn all persons who might have been upon said Scotland Street near said railroad crossing and that the failure of said defendant to observe this duty which it owed to the public in general and to the said deceased, was negligence and such failure was the proximate cause of the injury and death of the said Jack H. Stringfellow. And the plaintiff avers that by reason of said negligence of the defendant the said Jack H. Stringfellow was fatally injured and from such injuries died on, to-wit: March 24th, 1931; and plaintiff alleges that by reason of the premises she is entitled to recover of and from said defendant damages for the loss of services of such minor child and also for the mental pain and suffering of plaintiff resulting from the injury and death of said minor child, to the damage of the plaintiff in the sum of $25,000.00.

Wherefore plaintiff sues and demands judgment for damages of every kind and character which may lawfully be recovered under this action against said defendant and claims damages in the sum of $25,000.00.

Fifth Count

(1) Plaintiff is a resident of Pinellas County, Florida, and the widow of Guy Stringfellow, deceased, and the

[fol. 34] mother of Jack H. Stringfellow, deceased, a minor child, whose father, Guy Stringfellow is deceased, and the defendant, Atlantic Coast Line Railroad Company is a corporation chartered under the laws of the State of Virginia and owns and/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and running in and through the incorporated City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad Company, runing north and south, cross said street at right angles thereto; that said Scotland Street is used constantly and habitually by pedestrians and those travelling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said Railroad crossing is a populous section of said city, and is constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day of March, 1931, at about the hour of six o'clock, P. M., the said Jack H. Stringfellow was riding in an automobile which was being driven by his father, Guy Stringfellow, along said Scotland Street, going in an easterly direction at a point on said Scotland Street where the railroad tracks of the defendant Company and said Scotland Street intersect and cross and that at said time and place the said Jack H. Stringfellow was struck and fatally injured by said Railroad Company's north bound passenger train No. 132, said train being run at a high rate of speed over said Scotland Street crossing; and plaintiff further avers that said defendant, Railroad Company, had been in the habit [fol. 35] of, and had generally and customarily been, running said engine and train of cars in and through the incorporated City of Dunedin and over said crossing, at a high, reckless and dangerous rate of speed, in flagrant violation of the rights of persons who may have been upon

said Scotland Street, and the said defendant could reasonably have foreseen or contemplated that the running of said train in and through the said City of Dunedin and over and across said Scotland Street at an excessive rate of speed, considering the ordinary conditions of human activities in said City of Dunedin at said crossing, would probably result in an injury to persons lawfully upon said street, and that the excessive rate of speed of said train in and through said City of Dunedin and over and across said Scotland Street at the time aforesaid, constituted negligence. And the plaintiff avers that by reason of said negligence of the defendant the said Jack H. Stringfellow was fatally injured and from such injuries dies on, to-wit: March 24th, 1931; and plaintiff alleges that by reason of the premises she is entitled to recover of and from said defendant damages for the loss of service of such minor child and also for the mental pain and suffering of plaintiff resulting from the injury and death of said minor child, to the damage of the plaintiff in the sum of $25,000.00.

Wherefore plaintiff sues and demands judgment for damages of every kind and character which may lawfully be recovered under this action against said defendant and claims damages in the sum of $25,000.00.

Campbell & McLean, by Wm. C. McLean, Solicitors for Plaintiff.

[fol. 36] IN UNITED STATES DISTRICT COURT

No. 2732-T

[Title omitted]

PLEA—Filed July 6, 1931

Now comes the Defendant, Atlantic Coast Line Railroad Company, a corporation, in the above-entitled cause, by its undersigned attorneys, and for Plea to Plaintiff's Declaration, and each count thereof, filed in said cause, says:

1. That it is not guilty.

Jas. R. Bussey, Sam H. Mann, Jr., McKinney Barton.

Duly sworn to by McKinney Barton. Jurat omitted in printing.

[fol. 37] IN UNITED STATES DISTRICT COURT

No. 2733

[Title omitted]

AMENDED DECLARATION—Filed May 25, 1931

Plaintiff, Sarah Elizabeth Stringfellow, a widow, by her attorneys, Campbell & McLean, sues the Atlantic Coast Line Railroad Company, a corporation, defendant herein, who has been summoned to answer the plaintiff in a civil action for damages.

First Count

(1) Plaintiff is a resident and citizen of Pinellas County Florida, and the widow of Guy Stringfellow, deceased, and the defendant, Atlantic Coast Line Railroad Company, is a corporation chartered under the laws of the State of Virginia, and owns and/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and running in and through said County of Pinellas, and State of Florida, and running in and through the incorporated [fol. 38] City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said railroad Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of the said Railroad Company, running North and south, cross said street at right angles thereto; that said Scotland Street is used constantly and habitually by pedestrians and those travelling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said railroad crossing is a populous section of said City, and is constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the

9th day of March, 1931, at about the hour of six o'clock P. M., the said Guy Stringfellow was travelling along said Scotland Street in his automobile, going in an easterly direction at a point on said Scotland Street where the railroad tracks of the defendant Company and said Scotland Street intersect and cross, and that at the said time and place the defendant Railroad Company carelessly and negligently propelled and ran its train, against and upon the said automobile which said deceased was driving aforesaid, and upon said Guy Stringfellow, deceased, with great force and violence, whereby deceased was then and there, by said negligence and carelessness of the defendant, killed; and plaintiff alleges that by reason of the premises she has been deprived of the support, maintenance, and prospective earnings of her said deceased husband, which she is entitled to receive, and has also been deprived of the comfort, association and protection of said deceased, to the damage of the plaintiff in the sum of $20,000.00.

Wherefore plaintiff sues and demands judgment against said defendant and claims damages in the sum of $30,000.00.

[fol. 39] Second Count

(1) Plaintiff is a resident and citizen of Pinellas County, Florida, and the widow of Guy Stringfellow, deceased, and the defendant, Atlantic Coast Line Railroad Company, is a corporation chartered under the laws of the State of Virginia, and owns and/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and running in and through said County of Pinellas, and State of Florida, and in and through the incorporated City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks

of said Railroad Company, running north and south, cross said street at right angles thereto; that said Scotland Street is used constantly and habitually by pedestrians and those travelling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said railroad crossing is a populous section of said City, and is constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day of March, 1931, at about the hour of six o'clock P. M., the said Guy Stringfellow was travelling along said Scotland Street in his automobile, going in an easterly direction at a point on said Scotland Street where the railroad tracks of the defendant Company and said Scotland Street intersect and cross and that at said time and place the said Guy Stringfellow was struck and killed by said Railroad Com-
[fol. 40] pany's north bound passenger train No. 132, and that no alarm or warning of any kind was given of the approach of said train either by the ringing of its bell or the blowing of its whistle and said train was being run at a high and dangerous rate of speed and the plaintiff alleges that the speed of said train and the failure of the defendant to give warning of its approach either by the blowing of the whistle or the ringing of the bell at the time, place and under the circumstances, was negligence. And the plaintiff avers that by reason of said negligence of the defendant the said Guy Stringfellow was killed; and plaintiff alleges that by reason of the premises she has been deprived of the support, maintenance, and prospective earnings of her said deceased husband, which she is entitled to receive and has also been deprived of the comfort, association and protection of said deceased, to the damage of the plaintiff in the sum of $30,000.00.

Wherefore plaintiff sues and demands judgment against said defendant and claims damages in the sum of $30,000.00.

Third Count

(1) Plaintiff is a resident and citizen of Pinellas County, Florida, and the widow of Guy Stringfellow, deceased, and the defendant, Atlantic Coast Line Railroad Company, is a corporation chartered under the laws of the State of Virginia, and owns and/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurte-

nances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and running in and through the said County of Pinellas, and State of Florida, and in and through the incorporated City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

[fol. 41] (2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad Company, running north and south, cross said street at right angles thereto; that said Scotland Street is used constantly and habitually by pedestrians and those travelling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said railroad crossing is a populous section of said City, and is constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day of March, 1931, at about *the hour of six o'clock* P. M., the said Guy Stringfellow was travelling along said Scotland Street in his automobile, going in an easterly direction at a point on said Scotland Street where the railroad tracks of the defendant Company and said Scotland Street intersect and cross and that at said time and place the said Guy Stringfellow was struck and killed by said Railroad Company's north bound passenger train No. 132, said train being run at a high rate of speed over said Scotland Street crossing, and that if warning signals were given by said train, the speed of said train rendered such warning signals unavailing and useless to one aproaching said crossing in an easterly direction along said street as the view of the tracks of said railroad were so obstructed as to render the approach to said tracks dangerous, which fact was known to said defendant or could have been known by it in the exercise of reasonable diligence, and the plaintiff alleges that the speed of said train at the time, place and under the circumstances constituted negligence. And the plaintiff avers that by reason of said negligence of the [fol. 42] defendant the said Guy Stringfellow was killed;

and plaintiff alleges that by reason of the premises she has been deprived of the support maintenance, and prospective earnings of her said deceased husband, which she is entitled to receive and has also been deprived of the comfort, association and protection of said deceased, to the damage of the plaintiff in the sum of $30,000.00.

Wherefore plaintiff sues and demands judgment against said defendant and claims damages in the sum of $30,000.00.

Fourth Count

(1) Plaintiff is a resident and citizen of Pinellas County, Florida, and the widow of Guy Stringfellow, deceased, and the defendant, Atlantic Coast Line Railroad Company, is a corporation chartered under the laws of the State of Virginia, and owns and/or operates a railroad, tracks, cars, locomotive and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and running in and through said County of Pinellas, and State of Florida, and in and through the incorporated City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad Company, running north and south, cross said street at right angles thereto; that said Scotland street is used constantly and habitually by pedestrians and those travelling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said rail- [fol. 43] road crossing is a populous section of said City, and is constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day of March, 1931, at about the hour of six o'clock P. M., the said Guy Stringfellow was traveling along said Scotland Street in his automobile, going in an easterly direction at a point on said Scotland Street where the railroad tracks of the defendant Company and said Scotland Street intersect and

cross and that at said time and place the said Guy Stringfellow was struck and killed by said Railroad Company's north bound passenger train No. 132, said train being run at a high rate of speed over said Scotland Street crossing; that at the time aforesaid there was a strong wind blowing from the northwest which was known to said defendant, or could have been known to a person in possession of his ordinary faculties, and the sound of the approaching train and warnings of its approach, if any, were obstructed by the wind to one approaching said crossing while travelling in an easterly direction along said street and that in approaching said railroad tracks in an easterly direction along said Scotland Street intervening objects prevent the view of an approaching train from the south until within a few feet of the tracks of said railroad and that at said time and place the said defendant failed to exercise such care, prudence and caution as the circumstances of said railroad crossing reasonably demanded of it in that said train approached and passed over said crossing at a high rate of speed and failed to give suitable and proper warning of its approach and that it was the duty of said defendant to warn by appropriate signals all persons who may have been upon said Scotland Street of the approach of said train, and the said defendant failed to use such ordinary precaution as the exergencies of the circumstances required, to warn all persons who might have been upon said Scotland Street near said railroad crossing and that the failure of said defendants to observe this duty which it [fol. 44] owed to the public in general and to the deceased, was negligence and such failure was the proximate cause of the injury and death of the said Guy Stringfellow. And the plaintiff avers that by reason of said negligence of the defendant the said Guy Stringfellow was killed; and plaintiff alleges that by reason of the premises she has been deprived of the support, maintenance, and prospective earnings of her said deceased husband, which she is entitled to receive and has also been deprived of the comfort, association and protection of said deceased, to the damage of the plaintiff in the sum of $30,000.00.

Wherefore plaintiff sues and demands judgment against said defendant and claims damages in the sum of $30,000.00.

Fifth Count

(1) Plaintiff is a resident and citizen of Pinellas County, Florida, and the widow of Guy Stringfellow, deceased, and the defendant Atlantic Coast Line Railroad Company, is a coporation chartered under the laws of the State of Virginia, and owns and/or operates a railroad, tracks, cars, locomotive and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and running in and through said County of Pinellas and State of Florida, and in and through the incorporated City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad Company, running north and south, cross said street at right angles thereto; that said Scot [fol. 45] land Street is used constantly and habitually by pedestrians and those traveling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said railroad crossing is a populous section of said City, and is constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day of March, 1931, at about the hour of six o'clock P. M., the said Guy Stringfellow was travelling along said Scotland Street in his automobile going in an easterly direction at a point on said Scotland Street where the railroad tracks of the defendant Company and said Scotland Street intersect and cross and that at said time and place the said Guy Stringfellow was struck and killed by said Railroad Company's north bound passenger train No. 132, said train being run at a high rate of speed over said Scotland Street crossing; and plaintiff further avers that said defendant, Railroad Company, had been in the habit of and had generally and customarily been, running said engine and train of cars in and through the incorporated City of Dunedin and over said crossing, at a high, reckless, and dangerous rate of speed, in flagrant violation of

the rights of persons who may have been upon said Scotland Street, and the said defendant could reasonably have for-seen or contemplated that the running of said train in and through the said City of Dunedin and over and across said Scotland Street at an excessive rate of speed, considering the ordinary conditions of human activities in said City of Dunedin at said crossing, would probably result in an injury to persons lawfully upon said street, and that the excessive rate of speed of said train in and through said City of Dunedin and over and across said Scotland Street at the time aforesaid, constituted negligence. And the plaintiff avers that by reason of said negligence of the defendant the said Guy Stringfellow was killed; and plain-
[fol. 46] tiff alleges that by reason of the premises she has been deprived of the support, maintenance, and prospective earnings of her said deceased husband, which she is entitled to receive and has also been deprived of the comfort, association and protection of said deceased, to the damage of the plaintiff in the sum of $30,000.00.

Wherefore plaintiff sues and demands judgment against said defendant and claims damages in the sum of $30,000.00.

Campbell & McLean, by Wm. C. McLean, Attorneys for Plaintiff.

[fol. 47] IN UNITED STATES DISTRICT COURT

No. 2733-*T*.

[Title omitted]

PLEA—Filed July 6, 1931

Now comes the Defendant, Atlantic Coast Line Railroad Company, a Corporation, in the above-entitled cause, by its undersigned attorneys, and for Plea to the Plaintiff's declaration, and each Count thereof, filed in said cause, says:

1. That it is not guilty.

Jas. R. Bussey, Sam H. Mann, Jr., McKinney Barton, Attorneys for Defendant.

Duly sworn to by McKinney Barton. Jurat omitted in printing.

[fol. 48] IN UNITED STATES DISTRICT COURT

No. 2734

[Title omitted]

Civil Action. Damages: $15,000.00

AMENDED DECLARATION—Filed May 25, 1931

Plaintiff, Sarah Elizabeth Stringfellow, as administratrix of the estate of Jack H. Stringfellow, deceased, by her attorneys, Campbell & McLean, sues the Atlantic Coast Line Railroad Company, a corporation, defendant herein, who has been summoned to answer the plaintiff in a civil action for damages.

First Count

(1) Plaintiff is a resident and citizen of Pinellas County, Florida, and the Defendant, Atlantic Coast Line Railroad Company, is a corporation chartered under the laws of the State of Virginia, and owns and/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and running in and through said County of Pinelles, and State of Florida, and in and through the incor- [fol. 49] porated City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad Company, running North and South, cross said street at right angles thereto; that said Scotland Street is used constantly and habitually by pedestrains and those travelling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said railroad crossing is a populous section of said City, and is constantly and habitually used by people in crossing and

recrossing said railroad tracks; that on the 9th day of March, 1931, at about the hour of six o'clock P. M., the said Jack H. Stringfellow was riding in an automobile which was being driven by his father, Guy Stringfellow, along said Scotland Street, going in an easterly direction at a point on said Scotland Street where the railroad tracks of the defendant Company and said Scotland Street intersect and cross, and that at the said time and place the defendant Railroad Company, carelessly and negligently propelled and ran its train against and upon the said automobile in which said deceased was riding, aforesaid, and upon said Jack H. Stringfellow, deceased, with great force and violence, whereby deceased was then and there, by said negligence and carelessness of the defendant, fatally injured and from such injuries died on, to-wit: March 24th, 1931; and that the said Jack H. Stringfellow died leaving neither widow nor minor child or children, nor any person or persons dependent upon him, the said Jack H. Stringfellow, for a support; that the said Sarah Elizabeth Stringfellow, [fol. 50] plaintiff, was on to-wit: March 25th, 1931, duly appointed as administratrix of the estate of the said Jack H. Stringfellow, deceased; and plaintiff alleges that by reason of the premises she is entitled to recover of and from said defendant the pecuniary value of the prospective earnings and savings that the said deceased could reasonably have expected but for the death of said deceased, to the damage of the plaintiff in the sum of $15,000.00.

Wherefore plaintiff sues and demands judgment for damages of every kind and character which may lawfully be recovered under this action against said defendant and claims damages in the sum of $15,000.00.

Second Count

(1) Plaintiff is a resident and citizen of Pinellas County, Florida, and the defendant, Atlantic Coast Line Railroad Company, is a corporation chartered under the laws of the State of Virginia, and owns and/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and running in and through said County of Pinellas, and State of Florida, and in and through the incorporated

City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin, and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad Company, running north and south, cross said street at right angles thereto; that said Scotland Street [fol. 51] is used constantly and habitually by pedestrains and those travelling in conveyances of all kinds, and in one of the main thoroughfares of said City, and the point of said railroad crossing is a populous section of said City, and is constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day of March, 1931, at about the hour of six o'clock P. M. the said Jack H. Stringfellow was riding in an automobile which was being driven by his father, Guy Stringfellow, along said Scotland Street, going in an easterly direction at a point on said Scotland Street where the railroad tracks of the defendant Company and said Scotland street intersect and cross, and that at said time and place the said Jack H. Stringfellow was struck and fatally injured by said Railroad Company's north bound passenger train No. 132 and that no alarm or warning of any kind was given of the approach of said train either by the ringing of its bell or the blowing of its whistle and said train was being run at a high and dangerous rate of speed and the plaintiff alleges that the speed of said train and the failure of the defendant to give warning of its approach either by the blowing of the whistle or the ringing of the bell at the time, place and under the circumstances, was neligence. And the plaintiff avers that by reason of said negligence of the defendant the said Jack H. Stringfellow was fatally injured and from such injuries died on, to-wit: March 24th, 1931, and that said Jack H. Stringfellow died leaving neither widow now minor child or children, nor any person or persons dependent upon him, the said Jack H. Stringfellow, for a support; that the said Sarah Elizabeth Stringfellow, plaintiff, was on to-wit: March 25th, 1931, duly appointed

as administratrix of the estate of the said Jack H. Stringfellow, deceased; and plaintiff alleges that by reason of the premises she is entitled to recover of any from said defend- [fol. 52] ant the pecuniary value of the prospective earnings and savings that the said deceased could reasonably have expected but for the death of said deceased, to the damage of the plaintiff in the sum of $15,000.00.

Wherefore plaintiff sues and demands judgment for damages of every kind and character which may lawfully be recovered under this action against said defendant and claims damages in the sum of $15,000.00.

Third Count

(1) Plaintiff is a resident and citizen of Pinellas County, Florida, and the defendant, Atlantic Coast Line Railroad Company, is a corporation chartered under the laws of the State of Virginia, and owns/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and running in and through said County of Pinellas, and State of Florida, and in and through the incorporated City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad Company, running north and south, cross said street at right angles thereto, that said Scotland Street is used constantly and habitually by pedestrians and those travelling in conveyances of all kinds, and is one of the [fol. 53] main thoroughfares of said City, and the point of said railroad crossing is a populous section of said City and is constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day of March, 1931, at about the hour of six o'clock P. M., the said Jack H. Stringfellow was riding in an automobile which was being driven by his father Guy Stringfellow

along said Scotland Street, going in an easterly direction at a point on said Scotland Street where the railroad tracks of the defendant Company and said Scotland Street intersect and cross and that at said time and place the said Jack H. Stringfellow was struck and fatally injured by said Railroad Company's north bound passenger train No. 132, said train being run at a high rate of speed over said Scotland Street crossing, and that if warning signals were given by said train, the speed of said train rendered such warning signals unavailing and useless to one approaching said crossing in an easterly direction along said street as the view of the tracks of said railroad were so obstructed as to render the approach to said tracks dangerous, which fact was known to said defendant or could have been known by it in the exercise of reasonable diligence, and the plaintiff alleges that the speed of said train at the time, place and under the circumstances constituted negligence. And the plaintiff avers that by reason of said negligence of the defendant the said Jack H. Stringfellow was fatally injured and from such injuries died on, to-wit: March 24th, 1931; and that said Jack H. Stringfellow died leaving neither widow nor minor child or children, nor any person or persons dependent upon him, the said Jack H. Stringfellow, for a support; that the said Sarah Elizabeth Stringfellow, plaintiff, was on, to-wit: March 25th, 1931, duly appointed as administratrix of the estate of said Jack H. Stringfellow, deceased, and plaintiff alleges that by reason of the premises she is entitled to recover of and from said [fol. 54] defendant the pecuniary value of the prospective earnings and savings that the said deceased could reasonably have expected but for the death of said deceased, to the damage of the plaintiff in the sum of $15,000.00.

Wherefore plaintiff sues and demands judgment for damages of every kind and character which may lawfully be recovered under this action against said defendant and claims damages in the sum of $15,000.00.

Fourth Count

(1) Plaintiff is a resident and citizen of Pinellas County, Florida, and the defendant, Atlantic Coast Line Railroad Company, is a corporation chartered under the laws of the

State of Virginia, and owns and/or operates a railroad, tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and running in and through the incorporated City of Dunedin, Pinellas County, Florida, and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad Company, running north and south, cross said street at right angles thereto; that said Scotland Street is used constantly and habitually by pedestrians and those travelling in conveyances of all kinds, and in one of the main thoroughfares of said City, and the point of said railroad crossing is a populous section of said City and is con- [fol. 55] stantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day of March, 1931, at about the hour of six o'clock, P. M., the said Jack H. Stringfellow was riding in an automobile which was being driven by his father, Guy Stringfellow, along said Scotland Street going in an easterly direction at a point on said Scotland Street where the railroad tracks of the defendant Company and said Scotland Street intersect and cross and that at said time and place the said Jack H. Stringfellow was struck and fatally injured by said Railroad Company's north bound passenger train No. 132, said train being run at a high rate of speed over said Scotland Street crossing; that at the time aforesaid there was a strong wind blowing from the northwest which was known to said defendant, or could have been known to a person in possession of his ordinary faculties and the sound of the approaching train and warnings of its approach, if any, were obstructed by the wind to one approaching said crossing while travelling in an easterly direction along said street and that in approaching said railroad tracks in an easterly direction along said Scotland Street intervening objects prevent the view of an approaching train from the south until within a few feet of the tracks of said rail-

road, and that at said time and place the said defendant failed to exercise such care, prudence and caution as the circumstances of said crossing reasonably demanded of it in that said train approached and passed over said crossing at a high rate of speed and failed to give suitable and proper warning of its approach and that it was the duty of said defendant to warn by appropriate signals all persons who may have been upon said Scotland Street of the approach of said train, and the said defendant failed to use such ordinary precaution as the exergencies of the circumstances required, to warn all persons who might have been upon said Scotland Street near said railroad crossing and [fol. 56] that the failure of said defendant to observe this duty which it owned to the public in general and to the said deceased, was negligence and such failure was the proximate cause of the injury and death of the said Jack H. Stringfellow. And the plaintiff avers that by reason of said negligence of the defendant the said Jack H. Stringfellow was fatally injured and from such injuries died on, to-wit: March 24, 1931; and that said Jack H. Stringfellow died leaving neither widow nor minor child or children, nor any person or persons dependent upon him, the said Jack H. Stringfellow, for a support; that the said Sarah Elizabeth Stringfellow, plaintiff, was on, to-wit: March 25th, 1931, duly appointed as administratrix of the estate of the said Jack H. Stringfellow, deceased; and plaintiff alleges that by reason of the premises she is entitled to recover of and from said defendant the pecuniary value of the prospective earnings and savings that the said deceased could reasonably have expected but for the death of said deceased, to the damage of the plaintiff in the sum of $15,000.00.

Wherefore plaintiff sues and demands judgment for damages of every kind and character which may lawfully be recovered under this action against said defendant and claims damages in the sum of $15,000.00.

Fifth Count

(1) Plaintiff is a resident and citizen of Pinellas County, Florida, and the defendant, Atlantic Coast Line Railroad Company, is a corporation chartered under the laws of the State of Virginia, and owns and/or operates a railroad,

tracks, cars, locomotives and other railroad appliances and appurtenances and operates its trains on said railroad extending from St. Petersburg, Florida, to Jacksonville, Florida, and running in and through the incorporated City of [fol. 57] Dunedin, Pinellas County, Florida and receives and transports passengers and freight for hire, as a common carrier.

(2) Plaintiff further avers that the defendant was running and operating a train on the tracks of the said Railroad Company in and through said incorporated City of Dunedin and over and across Scotland Street in said City on the 9th day of March, 1931; that said Scotland Street is a public thoroughfare running east and west and the tracks of said Railroad Company running north and south, cross said street at right angles thereto; that said Scotland Street is used constantly and habitually by pedestrians and those travelling in conveyances of all kinds, and is one of the main thoroughfares of said City, and the point of said Railroad crossing is a populous Section of said City, and is constantly and habitually used by people in crossing and recrossing said railroad tracks; that on the 9th day of March, 1931, at about the hour of six o'clock P. M., the said Jack H. Stringfellow was riding in an automobile which was being driven by his father, Guy Stringfellow, along said Scotland Street, going in an easterly direction at a point on said Scotland Street where the railroad tracks of the defendant company and said Scotland Street intersect and cross and that at said time and place the said Jack H. Stringfellow was struck and fatally injured by said Railroad Company's north bound passenger train No. 132, said train being run at a high rate of speed over said Scotland Street crossing; and plaintiff further avers that said defendant, Railroad Company, had been in the habit of, and had generally and customarily been running said engine and train of cars in and through the incorporated City of Dunedin and over said crossing, at a high, reckless and dangerous rate of speed, in flagrant violation of the rights of persons who may have been upon said Scotland Street, and the said defendant could reasonably have foreseen or contemplated that the running of said train in and through the said City of Dunedin and over and across said Scotland Street

[fol. 58] at an excessive rate of speed, considering the ordinary conditions of human activities in said City of Dunedin at said crossing, would probably result in an injury to persons lawfully upon said Street, and that the excessive rate of speed of said train in and through said City of Dunedin and over and across said Scotland Street at the time aforesaid, constituted negligence. And the plaintiff avers that by reason of said negligence of the defendant the said Jack H. Stringfellow was fatally injured and from such injuries died on, to wit: March 24th, 1931; and that said Jack H. Stringfellow died leaving neither widow nor minor child or children, nor any person or persons dependent upon him, the said Jack H. Stringfellow, for support; that the said Sarah Elizabeth Stringfellow, plaintiff, was on, to-wit: March 25th, 1931, duly appointed as administratrix of the estate of the said Jack H. Stringfellow, deceased, and plaintiff alleges that by reason of the premises she is entitled to recover of and from said defendant the pecuniary value of the prospective earnings and savings that the said deceased could reasonably have expected but for the death of said deceased, to the damage of the plaintiff in the sum of $15,000.00.

Wherefore plaintiff sues and demands judgment for damages of every kind and character which may lawfully be recovered under this action against said defendant and claims damages in the sum of $15,000.00.

Campbell & McLean, by Wm. C. McLean, Attorneys for Plaintiff.

[fol. 59] IN UNITED STATES DISTRICT COURT

No. 2734

[Title omitted]

PLEA—Filed July 6, 1931

Now comes the defendant, Atlantic Coast Line Railroad Company, a Corporation, in the above-entitled cause, by

its undersigned attorneys, and for Plea to Plaintiff's Declaration, and each count thereof, filed in said cause, says:

1. That it is not guilty.

Jas. R. Bussey, Sam H. Mann, Jr., McKinney Barton, Attorneys for Defendant.

Duly sworn to by McKinney Barton. Jurat omitted in printing.

[fol. 60] IN UNITED STATES DISTRICT COURT

No. 2730-T. Civ.

[Title omitted]

VERDICT—Filed Feb. 3, 1932

We, the jury, find the defendant not guilty. So say we all.
Holland McCormick, Foreman.

IN UNITED STATES DISTRICT COURT

No. 2731-T. Civ.

[Title omitted]

VERDICT—Filed Feb. 3, 1932

We, the jury, find the defendant not guilty. So say we all.
Holland McCormick, Foreman.

IN UNITED STATES DISTRICT COURT

No. 2732-T. Civ.

[Title omitted]

VERDICT—Filed Feb. 3, 1932

We, the jury, find the defendant not guilty. So say we all.
Holland McCormick, Foreman.

In United States District Court

No. 2733-T. Civ.

[Title omitted]

Verdict—Filed Feb. 3, 1932

We, the jury, find the defendant not guilty. So say we all.

Holland McCormick, Foreman.

[fol. 61] In United States District Court

No. 2734-T. Civ.

[Title omitted]

Verdict—Filed Feb. 3, 1932

We, the jury, find the defendant not guilty. So say we all.

Holland McCormick, Foreman.

In United States District Court

No. 2730-T

Sarah Elizabeth Stringfellow, as Administratrix of the Estate of Hazel Stringfellow, Deceased,

v.

Atlantic Coast Line Railroad Company, a Corporation

Judgment—Feb. 13, 1932

The jury empanelled in the above entitled cause having heretofore rendered their verdict in favor of the defendant on the 3d day of February, 1932, it is thereupon considered, ordered and adjudged by the court that the defendant herein, Atlantic Coast Line Railroad Company, a corporation, do go hence without day, and that plaintiff take nothing by its plaint in said cause and that said defendant do have and recover of and from the plaintiff herein, Sarah

Elizabeth Stringfellow, as Administratrix of the Estate of [fol. 62] Hazel Stringfellow, deceased, the costs of court expended in their behalf herein, taxed at $—, for which let execution issue.

Alexander Akerman.

IN UNITED STATES DISTRICT COURT

No. 2731-T

SARAH ELIZABETH STRINGFELLOW, a Widow, Plaintiff,

v.

ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Defendant

JUDGMENT—Feb. 13, 1932

The jury empanelled in the above entitled cause having heretofore rendered their verdict in favor of the defendant on the 3d day of February, 1932, it is thereupon considered, ordered and adjudged by the court that the defendant herein, Atlantic Coast Line Railroad Company, a corporation, do go hence without day, and that plaintiff take nothing by its plaint in said cause and that said defendant do have and recover of and from the plaintiff herein, Sarah Elizabeth Stringfellow, a widow, the costs of court expended in their behalf herein, taxed at $—, for which let execution issue.

Alexander Akerman.

[fol. 63] IN UNITED STATES DISTRICT COURT

No. 2732-T

SARAH ELIZABETH STRINGFELLOW, a Widow, Plaintiff,

v.

ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Defendant

JUDGMENT—Feb. 13, 1932

The jury empanelled in the above cause having heretofore rendered their verdict in favor of the defendant on the 3d day of February, 1932, it is thereupon considered, ordered and adjudged by the court that the defendant herein,

Atlantic Coast Line Railroad Company, a corporation, do go hence without day and that plaintiff take nothing by its plaint in said cause and that said defendant do have and recover of and from the plaintiff herein, Sarah Elizabeth Stringfellow, a widow, the costs of court expended in their behalf herein, taxed at $—, for which let execution issue.

Alexander Akerman.

In United States District Court

No. 2733-T

Sarah Elizabeth Stringfellow, a Widow, Plaintiff,

v.

Atlantic Coast Line Railroad Company, a Corporation, Defendant

Judgment—Feb. 13, 1932

The jury empaneled in the above entitled cause having heretofore rendered their verdict in favor of the defendant on the 3d day of February, 1932, it is thereupon considered, [fol. 64] ordered and adjudged by the court that the defendant herein, Atlantic Coast Line Railroad Company, a corporation, do go hence without day, and that the plaintiff take nothing by its plaint in said cause and that said defendant do have and recover of and from the plaintiff herein, Sarah Elizabeth Stringfellow, a widow, the costs of court expended in their behalf, herein, taxed at $—, for which let execution issue.

Alexander Akerman.

In United States District Court

No. 2734-T

Sarah Elizabeth Stringfellow, as Administratrix of the Estate of Jack H. Stringfellow, Deceased, Plaintiff,

v.

Atlantic Coast Line Railroad Company, a Corporation, Defendant

Judgment—Feb. 13, 1932

The jury empaneled in the above cause having heretofore rendered their verdict in favor of the defendant on

the 3d day of February, 1932, it is thereupon considered, ordered and adjudged by the court that the defendant herein, Atlantic Coast Line Railroad Company, a corporation, do go hence without day and that plaintiff take nothing by its plaint in said cause and that said defendant do have and recover of and from the plaintiff herein, Sarah Elizabeth Stringfellow, as Administratrix of the Estate of Jack H. Stringfellow, Deceased, the costs of court expended in their behalf herein, taxed at $—, for which let execution issue.

Alexander Akerman.

[fol. 65] IN UNITED STATES DISTRICT COURT

[Titles omitted]

ORDER EXTENDING TIME—Feb. 5, 1932

The time to file the bills of exceptions and statement of the case by each of the plaintiffs and appellants in each of the above entitled causes (the same having been consolidated on the order of the trial court) is hereby extended for a period of eighty days from February 3, 1932, and the present term of Court is hereby extended for such purpose.

Done this the 5th day of February, A. D. 1932, at Tampa, Florida.

(Signed) Alexander Akerman, Judge U. S. District Court for the Southern District of Florida.

[fol. 66] IN UNITED STATES DISTRICT COURT

No. 2730, No. 2731, No. 2732, No. 2733, No. 2734

[Titles omitted]

[fol. 67] AFFIDAVIT OF SARAH ELIZABETH STRINGFELLOW

Sarah Elizabeth Stringfellow, being duly sworn according to law, deposes and says that she is the plaintiff in the

above entitled actions; that she is a citizen of the United States, and because of her poverty, she is unable to pay the cost of the appeal in the above causes or to give security therefor, and that no person properly interested in the aforesaid causes is able to pay or to secure the cost of appeal in said causes.

Sarah Elizabeth Stringfellow.

Sworn to and Subscribed before me this the 20 day of February, A. D. 1932. My Commission expires Feb. 22, 1935. Carmen G. Falsone, Notary Public.

ORDER OF THE COURT

It is ordered that the plaintiff in the above-entitled actions be, and she is hereby, permitted to appeal said actions to conclusions without prepayment of fees or costs.

Done and ordered at Tampa, Florida, this the 16th day of March, A. D. 1932.

Alexander Akerman, District Judge.

[fol. 68] IN UNITED STATES DISTRICT COURT

No. 2730, No. 2731, No. 2732, No. 2733, No. 2734

[Titles omitted]

[fol. 69] PETITION FOR APPEAL—Filed April 20, 1932

The plaintiff in each of the above named causes, conceiving herself aggrieved by the judgment made and entered on the 13th day of February, 1932, in each of the above entitled causes does hereby appeal from said judgments to the United States Circuit Court of Appeals for the Fifth Circuit, for the reason specified on the Assignment of Errors, which is filed herewith, and she prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said judgments were made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Circuit, in accord-

ance with the statutes and rules of the Court in such cases provided.

Doyle Campbell, Wm. C. McLean, Attorneys for Plaintiff.

[fol. 70] IN UNITED STATES DISTRICT COURT

No. 2730, No. 2731, No. 2732, No. 2733, No. 2734

[Titles omitted]

[fol. 71] ORDER ALLOWING APPEAL—April 20, 1932

On motion of Doyle Campbell and Wm. C. McLean, attorneys and counsel for plaintiff in each of the above causes, it is hereby ordered that an appeal to the Circuit Court of Appeals for the Fifth Circuit from the final judgment heretofore entered in each of said causes be and the same is hereby allowed and that a certified transcript of the record and all proceedings be forthwith transmitted to said Circuit Court of Appeals.

It is further ordered that no cost bond shall be required of the plaintiff in said causes, the Court having heretofore entered an order allowing an appeal in forma pauperis.

Done and Ordered at Tampa, Florida, this the 20th day of April, A. D. 1932.

Alexander Akerman, Judge.

[fol. 72] IN UNITED STATES DISTRICT COURT

No. 2730, No. 2731, No. 2732, No. 2733, No. 2734

[Titles omitted]

[fol. 73] ASSIGNMENTS OF ERROR—Filed April 20, 1932

Comes now the plaintiff in each of the above entitled causes and assigns errors in the trial and decision of the District Court, as follows:

1. The said Court erred in sustaining the motion made by counsel for defendant, that the Court direct the Jury

to return a verdict in favor of the defendant, made upon the conclusion of all the testimony introduced upon the trial of the case.

2. The said Court erred in charging the Jury to return a verdict for the defendant.

3. The said Court erred in not submitting for determination the issues between the parties to the Jury.

4. The said Court erred in sustaining the objection of counsel for the defendant to the following question asked the witness, Mary Mildred Smith, by counsel for plaintiff: "Q. You stated a little while ago that it was not making any noise. Were they ringing any bells or sounding any whistles?"

5. The said Court erred in sustaining the objection of counsel for defendant to the following question asked the witness, Harry Lishness, by counsel for plaintiff: "Q. What warning, or signals were given by this train on this afternoon before it reached Albert Street, if any?"

6. The said Court erred in sustaining the objection [fol. 74] of counsel for defendant to the following question asked the witness, George W. Smart, by counsel for plaintiff: "Q. Was there any ringing of the bells or blowing of the whistles?"

7. The said Court erred in overruling the objecton of counsel for plaintiff to the following question asked the witness, Mabel L. Seeley by counsel for defendant: "Q. Please state in your own way, where you were, what you were doing and what you heard and what you saw."

8. The said Court erred in overruling the objection of counsel for the plaintiffs to the following question asked the witness, Mabel L. Seeley, by counsel for defendant; and the answer thereto: "Q. State whether or not the driver of this automobile stopped from the time you first — him until the happening of the accident." "A. He did not stop. He slackened his pace a little bit."

9. The said Court erred in overruling the objection of counsel for the plaintiffs to the following question asked the witness, Mabel L. Seeley, by counsel for defendant; and the answer thereto. "Q. State whether or not the driver

of this automobile looked in the direction from which the train was coming before he entered upon the tracks." "A. Yes, it appeared to me that he did. He looked towards the train and then made a dash right across."

10. The said Court erred in overruling the objection of counsel for the plaintiffs to the following question asked the witness, Mabel L. Seeley, by counsel for defendant; and the answer thereto. "Q. After he had looked in the direction from which the train was approaching, what, if anything, did he do?" "A. He seemed to speed up to cross the tracks."

11. The said Court erred in overruling the objection [fol. 75] of counsel for the plaintiffs to the following question asked the witness, Mabel L. Seeley, by counsel for defendant; and the answer thereto: "Q. State whether the automobile was going fast or slow when you first saw it." "A. It was a T. Model Ford and it was rattling good."

Wherefore plaintiff in each of the above causes prays that the judgment of the District Court of the United States in and for the Southern District of Florida, in each of the said causes entered, be reversed and that the said District Court be directed to grant a new trial in each of the said causes.

Doyle Campbell, Wm. C. McLean, Attorneys for Plaintiffs.

Received a copy of the foregoing Assignment of Errors this April 20th, 1932.

Bussey, Mann & Barton, per McKinney Barton.

[fol. 76] IN UNITED STATES DISTRICT COURT

No. 2730, No. 2731, No. 2732, No. 2733, No. 2734

[Titles omitted]

[fol. 77] **Bill of Exceptions**—Filed April 20, 1932

Be it remembered that on the trial of the above causes at the regular February term, A. D. 1932, of the said Court,

the Honorable Alexander Akerman, Judge, presiding, when the following proceedings were had, to-wit:

The Court of its own motion directed the Clerk of said Court to enter the following order:

ORDER CONSOLIDATING CAUSES

It is ordered that the above entitled causes, Nos. 2730, 2731, 2732, 2733 and 2734 be, and the same are hereby consolidated for trial.

Both sides being present by counsel and announcing ready for trial, thereupon to try the issues therein, a Jury was empanelled and sworn according to law, and thereupon the plaintiff, to establish the issues upon her part, offered the following witnesses as her evidence in chief:

SARAH ELIZABETH STRINGFELLOW, the plaintiff, being duly sworn, deposed and testified as follows:

My name is Sarah Elizabeth Stringfellow, and I am the widow of Guy Stringfellow, deceased, and I live at Dunedin, and married Mr. Stringfellow fifteen years ago. I have four children: Sarah Elizabeth Stringfellow, aged 14; Helen Holt Stringfellow, aged 12. The other children [fol. 78] were Jack Stringfellow, who was nine years old on March 9, 1931, and Hazel Stringfellow, who was seven years old on March 9, 1931. At the time of his death Guy Stringfellow was 35 years and I was 30 years old. For two years prior to his death he operated a shoe shop in Dunedin. At the time of his death he was strong and healthy. He was six feet two inches tall and weighed 238 pounds and was well built. While he was operating the shoe shop I was there every day and saw him make entries on the back of this calendar during the month of January, 1931, which figures represent his weekly income. For the week ending March 7, his income was $59.30.

A calendar was introduced in evidence without objection and shows the following earnings of the deceased for the periods, to-wit:

Jan. 3, 1931	42.05
" 10, "	64.60
" 17, "	58.65
" 24, "	73.60
" 31, "	75.00
Feb. 6, "	72.50
" 14, "	70.35
" 21, "	71.60
" 28, "	52.60
Mch. 7, "	59.30

On the afternoon of March 9, 1931, I was at my home about one mile south of Scotland Street and three short blocks east of the railroad track. I was in the back yard gathering oranges and saw the Southland train as it entered Dunedin. I did not hear any whistle or bells. The [fol. 79] little boy, Jack Stringfellow, and the little girl, Hazel Stringfellow, both went to school and they helped me around the house in cleaning up, bringing in wood and gathering fruit and things like that. I did not see them the afternoon they were killed until about 11:30 o'clock that night in the hospital in Clearwater. Hazel died at 1:30 o'clock the next morning and Mr. Stringfellow died at the same time. Pack lived for fifteen days afterwards. I would see him in the hospital two or three times a day and would go back at night. He was able to talk with me and he suffered terrible. His leg and foot were broken up to his knee, and his arm was broken and something went through his back that affected his spine. Hazel's skull was fractured. They never would tell me how bad she was hurt. My health at the time of the injury was good. After I had learned of the accident and while I was at the hospital my husband and little girl was living and during the time the little boy, Jack, was living, and since their death, it has caused me a lot of pain, loss of sleep, sorrows and I have lost in weight, and I am unhealthy now. I am not trained to make and earn a living. I was married when I was sixteen and my relationships with my husband were happy. His habits and conduct were pleasant.

J. A. MEASE, being duly sworn, deposed and testified as follows:

My name is J. A. Mease, Jr. I am a physician. I knew Guy Stringfellow in his life time. On the afternoon of March 9, 1931, about six or six fifteen o'clock in the afternoon, I was at the A. C. L. station in Dunedin and saw Mr. Stringfellow on the ground to the front and to the side of the locomotive along the railroad tracks between Scotland and Main Streets opposite the station. Mr. Stringfellow died the following morning at 1:36. Hazel Stringfellow died about 1:30 the following morning. Jack Stringfellow died on March 24, 1931. He was pretty badly man- [fol. 80] gled. Mr. Guy Stringfellow, before his injury was in good physical condition and so was Mrs. Guy Stringfellow. There was an automobile near where the bodies were found very near the west side of the locomotive. The railroad runs north and south.

(No cross-examination.)

MARY MILDRED SMITH, being duly sworn, deposed and testified as follows:

My name is Mary Mildred Smith. I live at Dunedin. On Monday afternoon, March 9, 1931, I saw the Southland train that goes through Dunedin a little after 6:00 o'clock. It passed me on Albert Street which runs east and west and is the first street south of Scotland Street. North of Scotland Street is Main Street on which the depot is located. The distance between Albert Street and Scotland Street is a short city block. The railroad tracks run north and south and cross Albert Street at right angles. I was traveling in a Buick coupe, going east and west of the Albert Street crossing as the Southland train crossed Albert Street that afternoon. It was not making any noise and was going unusually fast. I have had experience in observing and noticing the speed of trains as I have ridden in an automobile on roads going parallel with the railroad tracks and have noticed the speedometer of the car and the speed of the train. I have done this more than once, and I live about a block and one half from the railroad and work at the Florida Citrus Machinery Company

about a block from the Atlantic Coast Line tracks and see about six trains per day. I have lived in Dunedin for eleven years and have no interest in this case whatever, and am not related to any of the parties of interest. At the time the train crossed Albert street it was running between forty and fifty miles an hour.

Counsel for plaintiff asked the witness the following question:

[fol. 81] Q. You stated a minute ago that it was not making any noise. Were they ringing any bells or sounding any whistles?

A. No.

Mr. Barton: Counsel objects to that question in that way and moves to strike it. They may ask if she heard any.

The Court: Do not consider that, gentlemen. Strike that out.

To which ruling the plaintiff then and there excepted.

I did not hear any whistles nor hear any ringing of the bell and I did not hear the bell ringing after the train passed Albert Street and went north on the tracks to Scotland Street. There is not anything defective about my hearing. I could see the last coach of the train when the engine was at Scotland street and I was at Albert Street and from looking at this last coach of the train, the speed of the engine when it reached Scotland Street was about thirty five or forty miles an hour. On this afternoon the wind was blowing very hard from the northwest. This train was a through train and stopped at Dunedin only when it is flagged. I have seen this particular train on other days prior to this time when it crossed Scotland and Albert Streets, and the customary speed this particular train usually made at these crossings is about forty miles an hour. Main Street is the most traveled street in Dunedin, and is the one where the depot is located. Douglas Avenue is the second most traveled Street and to get onto Douglas Avenue most people use the Scotland Street crossing, which is just one block from the center of town.

Cross-examination:

On the evening I saw this train I was in an automobile going east on Albert Street with Mr. Ronald Douglas.

When I saw the train I had not yet reached the crossing and stopped west of the tracks about fifteen feet as the train went by.

[fol. 82] J. E. BERGERT, being duly sworn, deposed and testified as follows:

My name is J. E. Bergert. I live at Tampa, Florida; I am a commercial photographer and on March 11, 1931, I took some pictures at Dunedin, between Main Street and Scotland Street and Albert Street, also the A. C. L. track and also took one picture on March 13, 1931. I used a regular commercial camera and developed the photographs myself. The measurements of the distances shown on the photographs were made by me.

The witness identified four photographs which were introduced in evidence without objection as plaintiff's Exhibits 2, 3, 4, and 5, as a correct portrayal of the permanent physical conditions that existed at the time of the accident. (These exhibits ordered transmitted in connection with the transcript.)

Cross-examination:

At this time I took the pictures on the east and west sides of the track. There are places cut out of tires that say 'stop' on them.

HARRY LISHNESS, being duly sworn, deposed and testified as follows:

My name is Harry Lishness. I live in Dunedin at 326 Albert Street, and was living at that place on the 9th day of March, 1931. I live there about six months during the winter and I am not related to any of the parties in interest in this case. I recall the evening of March 9, 1931, the Southland train, when it was north bound and passing through the town of Dunedin. When this train passed I was in a warehouse parallel with the tracks and within four or five feet of the tracks. I was at an open window. The house is on the north side of Albert Street between Albert and Scotland Streets. I was in the house by my-

self; there was not anything to prevent me from hearing [fol. 83] the train well & distinctly as it went right by the side of me. I have had experience in noticing and observing the speed of trains as I travel back and forth in an automobile from the north to the south twice a year. I live in Maine and drive my car from Maine to Florida about two thousand miles and in driving along parallel with trains I have noticed the speedometer, especially up here in northern Florida, a number of times. When the train passed where I was just before the accident on Scotland Street, it was traveling from forty to fifty miles an hour. It shook the building I was in quite a little. It does not shake it when it is going slower.

Counsel for plaintiff asked the witness the following question:

Q. What warning or signals were given by this train on this afternoon before it reached Albert Street, if any?

Mr. Barton: That is objected to. He cannot testify to that unless he absolutely knows himself.

The Court: Objection sustained.

To which ruling the plaintiff then and there excepted.

I heard the big whistle when it blew at Sunset Point, a mile or mile and a half from town. After it gets by there they blew the smaller whistle. I heard the smaller whistle two or three times after the big whistle. When the air whistle blew, the train was this side of the water tank. South of Albert Street, two or three streets cross the railroad. Between Albert Street and where the wreck took place on Scotland Street, I did not hear any whistle blow or bell ring. I am familiar with the railroad tracks from where I was when this train passed on up to Scotland Street crossing. I go up the track two to four times a day dur- [fol. 84] ing the six months I am in Florida. On the west side of the Atlantic Coast Line Tracks, beginning at the corner where the track intersects with Scotland Street, there are bushes growing up there on a vacant lot and just behind that there is a palm tree. The palm tree, I would think, is 25 feet tall and the other trees have been cut down and they are laying there cut now. I would think they were from 15 to 25 feet. At the time of the accident these

trees that are now cut were standing. I do not know who cut them. On the afternoon of the accident it was quite windy. The wind was blowing from the Northwest. This train is due in Dunedin right around six o'clock. A few minutes past, I don't know exactly the minute. On the afternoon of March 9, 1931, this train came in from 15 to 20 minutes past six o'clock. The customary speed of this train as it passed Scotland Street going north is about 25 miles an hour. I have noticed it lots of times, living right there in view of it every day. The speed of the train as it passed the window where I was near the railroad track until the engine reached Scotland Street, was about the same.

(No cross-examination.)

GEORGE SMART, being duly sworn, deposed and testified as follows:

My name is George Smart. I have lived in Dunedin for eight years on the south side of Scotland Street which runs east and west, and on the west side of the Atlantic Coast Line Railroad. My residence is probably 190 feet from the railroad tracks. On the evening of March 9, 1931, when the Southland train went north bound through Dunedin and crossed Scotland Street, I was in the back of the lot where my residence is and when the train reached Scotland street I heard the crash. I was about 200 feet from the intersection of Scotland street and the railroad. I went up to the depot where the wrecked car was just a little south of the loading platform. When I got there the car [fol. 85] was just clear of the rails and the train. The front of the engine was about 40 feet south of the loading platform. It was quite windy that day. The wind was from the north or northwest. I did not hear any signal warnings from the train. I was out in the open and there was not anything to keep me from hearing.

Counsel for plaintiff then asked the witness the following question:

Q. Was there any ringing of the bell or blowing of the whistle?

A. No.

Mr. Barton: Objected to.

The Court: Objection sustained. He could not tell whether they did anything or not. He could only tell whether he heard it or not. He cannot give anything but negative testimony if he was not looking at it or operating it. The only possible way that he could tell whether the whistle sounded or the bell rung would be by his hearing and he could only say that he did not hear it. He said he was not looking at it, that is, he said he did not see it, but heard it.

To which ruling the plaintiff then and there excepted.

I did not hear any bells rung or whistles blown. There is a vacant lot between my residence lot and the railroad tracks. I have observed the condition of the growth on the line by the A. C. L. railroad tracks and this vacant lot just south of Scotland street and its condition was such on March 9, 1931, that you could not see a train from the South without being on the side track. The hedge of trees growing along this line that are there now is probably 15 feet and is not in the same condition now as it was on March 9, 1931. The usual and customary speed of this train as it crossed Scotland Street is probably 30 or 35 miles an hour.

[fol. 86] Cross-examination:

I heard the train coming and also heard the crash and when I got out there the train had already stopped.

Mrs. Crystal Towne, being duly sworn deposed and testified as follows:

I am Mrs. Crystal V. Towne. On March 9th of last year, I was at Mrs. George Smart's residence, in the garden, and as we went to leave we walked along on the west side of her house from her back door along to the front and across the front yard to where my automobile was parked on the north side of Scotland Street facing west towards the bay. As I crossed Mrs. Smart's yard and sidewalk and as I walked across the street to my automobile, I did not see, during that time, Mr. Guy Stringfellow and his two children

in an automobile pass by. They did not pass while I was there. When I reached my automobile I tried to open the left hand side door but it was locked and I asked Mrs. Mary Mesner, who was with me to walk around the car and get in on the right side and then unlock it so I could get in. I had to wait until she unlocked it and as I was standing in the street with my hand on the door waiting for her to open it, I looked right towards the railroad track and as I looked, the train came out from behind the tall bushes there at that time, and as the train came out from behind these bushes I saw it strike the car and carry it down the railroad tracks. I could not see the train before it came out from behind the bushes. I did not know who was in the automobile. I did not hear any whistle blow or any bell rung. I was about 150 feet from the railroad track. Immediately after the accident we drove around to where the train was to see what had happened. I saw the automobile still on the train, clinging to the train, on the cow catcher, the front part of the engine—right in front. I saw them back the train up and take the car loose. The front of the engine was just about even with the loading platform by the depot and they took the automobile off and [fol. 87] carried it over to the side.

(Witness was handed a photograph marked Plaintiff's Exhibit No. 3, being a photograph of the intersection of Scotland Street and the railroad tracks looking north, with the measurements thereon showing the depot platform to be 295 feet from the crossing and a wrecked car to be 275 feet from the crossing.)

I saw the automobile right here (indicating); that is the same position and place this automobile was, when it was taken off of the front of the engine. When I got to the railroad platform Mr. Stringfellow was still in the car. I did not see the children until after they had them on the loading platform.

C. W. CLEARY, being duly sworn, deposed and testified as follows:

My name is C. W. Cleary, and I live in Dunedin and I am the publisher of the Dunedin Times. On the evening

of March 9, 1931, when the north bound Southland train passed Scotland Street in Dunedin, Florida, I was in the office of the Dunedin Times Building on Scotland Street which is west of the railroad track and north of Scotland Street and approximately 90 to 100 feet from the intersection of Scotland Street and the A. C. L. tracks. I was in the front or office part, on the east side of the building. I did not see the train. I heard it come in; I heard the noise as it crossed the crossing. It was a bang. I didn't know what it was at the time. I heard the crash. About five minutes after the accident I went up to where the wreck was and saw them taking a Ford automobile off of the front of the engine. I saw Mr. Guy Stringfellow and his two children. Mr. Stringfellow was lying on the ground. My office has been located there on Scotland street for about three years. I have seen the train come in almost every night. The usual and customary speed that this train crossed the Scotland Street crossing was at least [fol. 88] 25 miles an hour.

OFFER IN EVIDENCE

Counsel for plaintiff then introduced the American Experience Tables of Mortality, showing that at the age of 30 years, the life expectancy is 31.78 years; and that the expectancy of a person 35 years old is 25.35 years. And while the tables do not show the expectancy of persons under 10 years of age, the expectancy at the age of 10 years is 48.72.

Whereupon plaintiff rested.

Whereupon the defendant offered and introduced the following evidence:

W. D. GILLEN, being duly sworn, deposed and testified as follows:

My name is W. D. Gillen. I am a law agent in the employ of the Atlantic Coast Line Railroad Company and have been for six years. I am familiar with the Scotland Street crossing at Dunedin, Florida, and was familiar with

it at the time of the happening of this accident on March 9, 1931.

(The witness was handed Plaintiff's Exhibit No. 3, same being a photograph of the intersection of Scotland Street and the A. C. L. Railroad looking north.)

There are three tracks of the A. C. L. Railroad at the intersection of Scotland Street. The first track on the west is a switch or house track; the next track is the main track and the track towards the east is the switch track or storage track. The middle track is the main line. I have not measured the distance from the west line of the west track to the west line of the main track. The gauge [fol. 89] is 4 feet, 4 inches; 15 feet and 8 inches is what the distance should be. It is 11 feet from the inside line of the house track to the west line of the main line. At the time this accident happened, there is a stop sign a little to the right of the middle of Scotland Street going east which is approximately 20 feet west of the west rail of the house track. At the stop sign there is a vacant lot on the south side of Scotland Street with some trees or shrubbery along the edge of it 30 feet from the main line, and the stop sign is about on a line with that shrubbery. At the stop sign you could see a train 250 feet towards the south.

The witness then identified six photographs which were taken at or near the intersection of Scotland Street and the railroad crossing which were without objection filed as Defendant's Exhibits Nos. A, B, C, D, E and F as a correct portrayal of the permanent physical conditions that existed at the time of the accident. (These exhibits ordered transmitted in connection with the transcript.)

Cross-examination:

It is not true that a man in an automobile must have the front wheels in the center of the first side track before he can see down the railroad track.

H. O. Bassett, being duly sworn, deposed and testified as follows:

I am H. O. Bassett, an engineer of the A. C. L. Railroad Company and have been for 40 years on the 19th day of last

December. My run is on the Southland, between Trilby and St. Petersburg and I have been on that run a couple of years and a little over. I am the engineer who was operating the train when Mr. Guy Stringfellow and his two children were struck and killed on March 9, 1931, at the Scotland Street crossing in Dunedin. The train was going north. I was on 132 train, they call it, and on entering Dunedin, I reduced speed when I got into the vicinity of these crossings down to around to 15 to 20 miles an hour at the first crossing, there are five crossings there and as I [fol. 90] approached nearer the town I got slower and slower and blowed for road crossings which consists of four blasts first; I got down to the last crossings which are nearly together, hardly a block apart, four more blasts of the whistle, winding up with the last blast of the whistle at this street where the accident occurred. As I was entering Scotland Street the fireman hollered to me just before the engine struck the crossing to hold it. I put the brakes on in emergency and proceeded to stop as quick as I could and that is all that there was to it. The air brakes were in first class condition. I had a bell on the train being operated by the automatic bell ringer which had been placed in operation on entering the fifth crossing south of the depot which I would call five blocks; there were some of them short blocks. The bell continued to ring until after the accident. After we stopped, somebody called the fireman's attention to it after we had gotten off of the engine, to stop the bell from ringing. We had only a steam whistle on the engine. We did not have any air whistle. The difference between an air whistle and a steam whistle is that the steam whistle is operated by 200 pounds of steam and the air is operated by 130 pounds of air. You can hear the air whistle a long ways. The steam whistle, of course, you can hear a great deal farther and we did not have an air whistle on this engine and it was the steam whistle that was being blown. I did not see the automobile and the occupants before the collision. I was on the east side of the train and the car was coming from the west. I don't know what became of it. The fireman was hollering to hold and I felt the crash and I didn't know whether I had knocked it off or what became of it. To stop the train I put the brakes in emergency. There is no better or quicker way of stopping

a train. I mean by emergency that I put her down to the last notch. That is the highest braking power. With service application we have about 60 pounds of pressure but with the emergency, I think we have got about 95 or 98.

[fol. 91] Cross-examination:

I am 66 years old. I have been on this particular run for about two years. I made this run on the Southland passing Dunedin, going north, every day. I am pretty well acquainted with each and every one of these crossings. I did not see the automobile at all. It approached the train from the left and I was on the right hand side. I put the emergency on just as soon as the fireman told me, that very second. I applied them when I was approaching Scotland Street. The fireman hollered to me just before the pilot entered. The engine had gone fully onto the crossing. I was just entering the street, the south side of the street. The engineer is the man that puts on the automatic bell ringer, and I put it on myself. It is the rules of the company that it shall ring when it goes through a town. Many of these towns object to me blowing the steam whistle. We have the steam whistle on this train. I had never heard of any ordinance in Dunedin, therefore I blowed the steam whistle, the only thing we had. I do not know what height the hedge is on the left hand side of the right of way, as you go north just before you enter Scotland Street. There is an obstruction there but not a great deal. It is not very thick whatever it is. The fireman was sitting on the seat box right up to the cab window. I could not say where he was looking at. I was looking ahead on my side. I had the right hand side of the engine and the street crossing to watch out and he had the left hand side. He told me about seeing this car just as the front of the train entered the street. He hollered to hold her, that means to stop. The emergency brakes were working all right. I had seven coaches, most of them were Pullman cars. The first two cars, I think were combination. The grade towards the depot is comparatively level along there. The engine was not coasting. I was working steam. I did not reverse the [fol. 92] engine. I stopped just as rapidly as I could. I put on all I had. It was 265 to 275 feet from the south side of Scotland Street where I put on the emergency to the place where I stopped the train. The pilot of the engine

stopped probably 8 or 10 feet south of where the loading platform is. The tracks were dry at that time. The weather was dry. A little cloudy, I think. I don't remember what time the train was due in Dunedin. I think it was 6:06. If it was we were about five or six minutes late. The number of this train was 132. It never has had a little air whistle on it. The length of the engine is 78 feet from the pilot to the back of the tank. I backed the train to get the automobile off of the front of it. There were three people in the automobile at the time. We took the three people out. When the train stopped the automobile was put out on the left hand side next to the depot. We backed up six or seven feet. The auto was not quite even with the front of the engine when it pulled out. We backed it back because it was wedged under the drawhead and we backed it back to loosen it because we could not turn the car over very well. I wound up blowing the steam whistle for Scotland Street. I blew for Scotland street and the next street which is hardly a block south of that with four blasts, winding up with the last blast as I was approaching Scotland Street. I did not blow four blasts for Scotland Street and the next street just before it, I blow the two streets together and sounded the last whistle just before we came to Scotland Street. I don't remember about a strong wind blowing that day from the Northwest.

A. R. WHITE, being duly sworn, deposed and testified as follows:

[fol. 93] I am A. R. White, an employee of the Atlantic Coast Line Railroad Company, and have been for 11 or 12 years. I was the fireman with Mr. Bassett at Dunedin when an accident occurred in which three people met their death. The train was going north. I was on the seat box on the left side of the engine. I was sitting on my side and I got down about 30 or 40 feet from the crossing and saw this car coming up about the same distance from the crossing and went right in front of the engine and I jumped up and hollered to him to put on the emergency. The words I hollered to him were, I told him to wait, we are hitting a car. From the time I first saw the automobile until the time of the crash it did not slow up or stop or change its

speed any. It seemed just about the same. Just ran right in front of us. Before we came into the first road crossing south of Dunedin the engineer turned on his air ringer, automatic bell ringer. And he blew for all these. There is 4 or 5 crossings and including the one the accident happened on. The automatic bell stopped after the accident happened. I got off the engine and went out front and noticed it ringing and went back to the engine and shut it off. There was a steam whistle on the train. There was not any air whistle. When the train entered Scotland street it was going about 10 or 15 miles an hour. I hollered to the engineer warning him of the danger when the engine was about 30 to 60 feet from the crossing. The engineer immediately applied the emergency brakes. The accident happened regardless.

Cross-examination:

I told the engineer when we were about 30 to 60 feet before we got to the crossing. I jumped off my seat box and he put on the emergency just as soon as I hollered. When I first saw the automobile, it was about the same distance that we were from the track. I couldn't tell whether the automobile was going to stop. It was going [fol. 94] between 10 and 15 miles an hour. I didn't say that he put the brakes 30 to 60 feet from the crossing. I said when I saw we were hitting the car I told him to put the emergency on. I saw the car first when we were 30 to 60 feet from the crossing. I told him just a few minutes before we hit. After the emergency was put on the train went about 160 to 170 feet. It went two car lengths and the engine and these cars is about 60 feet long and the engine is about 40 to 50 feet long. The engine went up just about this side of the loading platform up there about Main Street. The emergency stayed on till the time he put it on until the train came to a stand still. There was no little air whistle on the train. I do not remember exactly where I was when they turned on this bell ringing apparatus, but we were coming into Dunedin on the other side, because I would usually reach up and try the bell cord. He began to blow down about the water tank, some place along there. And he blew two long blasts and two short blasts. He blew the regular crossing blow more than one time. He didn't

blow just one time for all those crossings. You couldn't do that because you would have to back up and come again and blow it another one. I have never done that just to blow. There are three or four streets that run parallel to Scotland Street that the train crosses over before you get to Scotland Street where this accident took place. I don't mean to say that the engineer, before he reached each and every one of these crossings, he blew two long and two short blasts. When he did get through blowing the crossing blow he would start on another one. I do not mean to say for every crossing he blew two long blasts and two short ones. I didn't say he blew for each crossing. I said he blew the crossing blow from the time he started blowing, he would blow I guess he blowed two or three crossing blows, something like that, I couldn't tell you exactly. I [fol. 95] don't remember clearly about it. There are certain things that are brought to my mind clearly. After he blew two long and two short blows at the water tank, I couldn't tell you what the next kind of blowing that he did: I do not know exactly. He blew some more because I know the whistle was blowing down at the other crossing. That is the rules. We have to blow. Two longs and a short and a long. We did not blow for each one of the crossings that way. We go through them every day. I know we did it. I never paid any particular attention to the kind of wind that was blowing. I don't remember exactly what time we were due there but we were about on time. We left St. Petersburg at 5:30 and I suppose we were about on time. It was about 6:05 or 6:10.

Whereupon the deposition of Mrs. MABEL L. SEELEY, a witness on behalf of the defendant, was read to the Jury.

My name is Mabel L. Seeley, aged 60. I live at Kenmore, New York, and I have lived in New York for 37 years. I was in Dunedin, Florida, on March 9, 1931. I had been there about five weeks and had rented an apartment in Mrs. Smart's house on Scotland Street. I witnessed the accident that happened on March 9, 1931, about 6:00 o'clock P. M. at a point where Scotland street intersects the A. C. L. railroad when an accident occurred by reason of a collision with a train and an automobile in which accident Mr. Stringfellow was injured.

To the question:

Q. Please state in your own way where you were, what you were doing, what you heard and what you saw,

counsel for plaintiff objected upon the following grounds:

[fol. 96] Mr. Campbell: That question tends to elicit from the witness evidence tending to show and prove that the deceased was guilty of contributory negligence when this defense has not been pleaded and when contributory negligence has not affirmatively appeared from the evidence of the plaintiff; and also in the answer she attempts to testify to a state of facts tending to show that the deceased was guilty of contributory negligence when this defense has not been pleaded by the defendant and when contributory negligence has not affirmatively appeared from the evidence of the plaintiff, and when it has not been shown by undisputed testimony that the defendant was free from negligence.

The Court: Objection overruled. In a plea of general issue the defendant may show that the plaintiff's negligence was the proximate cause of the injury. There is no question of comparison here because it is not raised by the pleas.

To which ruling the plaintiff then and there excepted.

A. When I went to get supper that night I discovered that I did not have any sugar so I said I would go and get it and as I came down the stairs I heard the noise and so decided that I could not cross the crossing before it came along. I walked out on the street and took my time, just then I heard an automobile coming by me, looked and decided to let it pass before I crossed the street. It passed me and then I crossed slantedly to the other side, all of the time watching the automobile to see whether it stopped at the crossing or not. He slackened just a little and made one dash across the track. The train struck the automobile, carried it on the front of the engine as far as the loading platform at the station and then it tumbled over. The house or apartment in which I was stopping on Scot-
[fol. 97] land Street faced north. I am not a very good judge of distances but I would say this house was located a short city block west of the A. C. L. Railroad crossing.

There was no other house on the south side of Scotland Street between the house in which I was stopping and the railroad crossing except a cottage that was nearer to the tracks but it was back quite a little ways. It was not right out on the street. I first heard the approach of the train before I reached the street, in fact before I came out of the house. I cannot tell the kind of noise that I heard. The noise continued right up until the accident. I was proceeding east on my errand for sugar. I was on the south side of Scotland Street and then I crossed slantedly to the north side. I had proceeded eastward on the south side of Scotland Street about one half the distance from the house to the railroad tracks before I crossed to the north side. After I had crossed to the north side of Scotland Street I stood just before I stepped up on the curb and watched to see if he could make it or if he could not. There is a Stop sign in the middle of Scotland Street and west of the railroad track. A rubber tire with "stop". The driver of the automobile did not stop before he reached this side.

To the question and answer:

Q. State whether the driver of this automobile stopped from the time you first saw him until the happening of the accident,

A. He did not stop. He slackened his pace a little bit.

counsel for plaintiff objected upon the following grounds:

Mr. Campbell: That question tends to elicit from the witness evidence tending to show and prove that the deceased was guilty of contributory negligence when this defense has not been pleaded and when contributory negligence has [fol. 98] not affirmatively appeared from the evidence of the plaintiff; and also in the answer she attempts to testify to a state of facts tending to show that the deceased was guilty of contributory negligence when this defense has not been pleaded by the defendant and when contributory negligence has not affirmatively appeared from the evidence of the plaintiff, and when it has not been shown by undisputed testimony that the defendant was free from negligence.

Which objection was overruled by the Court, to which ruling the plaintiff then and there excepted.

From the point where I stopped near the north side of Scotland Street, I cannot tell in feet how great a distance I could see in a southerly direction along the railroad tracks. It was not as far as a long city block. I think about one half of a city block.

To the question and answer:

Q. State whether or not the driver of this automobile looked in the direction from which the train was coming; before he entered upon the tracks.

A. Yes, it appeared to me that he did. He looked towards the train and then made a dash right across.

the plaintiff made the same objection, which objection was overruled by the Court. To which ruling the plaintiff then and there made exception.

At the time he looked in that direction I saw the train. He had just passed me in the automobile at the time he looked.

To the question and answer:

Q. After he had looked in the direction from which the train was approaching, what, if anything, did he do?

[fol. 99] A. He seemed to speed up to cross the tracks.

the plaintiff made the same objection, which objection was overruled by the Court, to which ruling the plaintiff then and there excepted.

I cannot state approximately the speed of the automobile from the time I first saw it until the accident and I cannot state approximately the speed of the train from the time I first saw it until the time of the accident. I would say the speed of the train was the usual speed of trains passing through Dunedin and it seemed to slacken up for the depot.

And to the question and answer:

Q. State whether the automobile was going fast or slow when you first saw it.

A. It was going fast. It was a T Model Ford and it was rattling good.

the plaintiff made the same objection, which objection was overruled by the Court, to which ruling the plaintiff then and there excepted.

The weather at that time was sunshiny and warm. I did not see any persons other than the occupants of the automobile at or near the scene of the accident at the time it happened.

Cross-examination:

I saw the Stringfellow automobile before it was struck by the train. He did not stop or slacken up. I do not have any interest in this case. It is immaterial to me who wins the case. I gave a written statement of my testimony to the claim agent of the Railroad Company before I left Dunedin, Florida, in March 1931. And then I refused to answer questions sent me by Campbell & McLean, the plaintiff's attorneys, after I left Dunedin; I thought that long as I had given one statement, that was enough. I did [fol. 100] not get offended while I was in Dunedin because I was not asked to attend and testify as a witness at a Coroner's inquest over the bodies of Mr. Guy Stringfellow and his children, held shortly after he was killed. I offered to give my statement but was told that they would come and see me later. To tell the truth I did not know whether I should or should not give plaintiff's attorneys a statement of my testimony as long as I had offered to testify in Dunedin at the coroner's inquest and my offer was not accepted. I thought it was not wanted. I know Mrs. George Smart of Dunedin, Florida.

Q. Isn't it a fact that about 10 or 15 minutes after the Stringfellow car had been struck by the train that you were standing in the yard in front of Mr. George Smart's home on Scotland Street in Dunedin, Florida, where you had a room, and didn't you then and there say in substance to Mrs. George Smart: "I thought when Stringfellow saw the train, he drove up pretty close to the tracks and almost stopped, looked south and then north and then speeded ahead to cross. I thought he saw the train, but undoubtedly he did not?"

A. That conversation took place up by the railroad tracks and I will tell you what more I said: "He deliberately drove onto the railroad tracks," and I also stated that he slackened his car instead of stopping it.

I do not recall that I know Mr. Wilmer H. James of Dunedin. Yes, I told someone in the grocery store that I just saw a terrible wreck.

Q. And didn't you then and there tell Mr. Wilmer H. [fol. 101] James, in substance, that you were waiting at the crossing for the train to pass and that you heard Mr. Stringfellow's car approaching and that the car made a noise like it had stopped, and then the car drove onto the track and was struck by the train?

A. No, I did not say anything about the automobile stopping. I never said that to anyone. I did say that I heard the noise of the automobile.

O. C. Howell, being duly sworn, deposed and testified as follows:

My name is O. C. Howell. I have lived in Dunedin for the last 12 years. I have been a policeman there for the last two years. I was a policeman there in March, 1931, and I saw the accident. On this date it was my business to flag the Main Street crossing at this particular time. And along between, I guess about 6:00 or 6:15 o'clock in the afternoon, the train gets along there somewhere along that time, and I was leaving the drug store, between the drug store and the crossing and I heard this train blow, and I walked on up to the crossing and did not see it down the railroad track and walked on up toward the depot and by that time I could see it coming around the curve at the water tank about a mile away and I tapped on the window for the station agent that the train was coming and about that time it blew down there and I started walking back toward the crossing a distance of about thirty or forty or fifty feet, about as far as from here to the back end of the building here, and before I got to the crossing I stopped and looked down the track again, and the train had blowed one time and I could hear it blowing, it was not blowing so awfully loud because the wind was blowing out of the northwest pretty hard. I got on the crossing and was looking south on the railroad track and it was coming along up the railroad track, and about that time it got to this Scotland Street crossing an automobile and the train met about the same time, and the train dragged this automobile up [fol. 102] to the station platform, and I could see the man in the car and the little boy, and I couldn't see any more. When I first saw it, the automobile and the train struck about the same time. I did not see the automobile before

it entered the track because the loading platform cut off my view. I could see the bell ringing and I could hear it as well as see it. I couldn't tell how fast the train was approaching going over this crossing because it was coming right directly towards me. I know Mr. Stringfellow and had been knowing him about one and one-half years. He used to go over this particular crossing all together after he moved down in that section of town. I only saw him go across there once in the afternoon. I saw him as many as a dozen times, I guess.

Cross-examination:

The first whistle I heard was a steam whistle. After the train passed the water tank I heard a whistle of some kind. I could not swear positively it was a steam whistle. I took it to be an air whistle. The Scotland Street crossing is a much frequented street. Main Street is supposed to be the main thoroughfare. There was quite a few crossed down there at the Scotland Street crossing. Yes, I remember testifying at the Coroner's inquest the day after the accident. I think my recollection about the transaction was fresher then than it is now. It has been more than a year. I remember that a stenographer took the evidence down at the inquest. I remember seeing the Official Court Reporter there, Mr. Satterfield.

Q. I want to ask you if you recall this question being asked you by Mr. McLean:

Q. Do you know whether or not the bell of the engine was ringing at the time this accident occurred?

A. Yes sir.

Q. Did you say to him:

[fol. 103] "Well, he always rings the bell, but I won't say this particular time he was ringing it, but I have noticed him numbers and numbers of evenings, he always rings his bell and blows his whistle."

Q. You stated that, did you not?

A. Yes sir.

Q. The next question:

Q. You won't say positive about this particular instance?

A. I won't say positive about this particular instance, I don't remember.

Q. You told him that, did you not?

A. Something to that effect, yes sir.

Q. You don't deny saying that?

A. No sir.

Q. Do you recall Mr. McLean asking you this question on this same coroner's inquest—the coroner asked this question instead of Mr. McLean:

Q. Scotland Street, Mr. Oliver, did you hear the train whistle blow beyond the Scotland Street crossing?

A. Yes sir, the air whistle.

Q. Did you make that statement?

A. If I remember right, I did, yes sir.

Q. Air whistle?

A. Yes sir.

Q. Did you make that statement?

A. Yes sir.

Q. The next question:

Q. How far was that beyond Scotland Street?

A. Well, it was on and off all of the way from where it came into Herring Street until it got up to the depot there.

Q. You made that statement, did you?

A. Yes sir.

Q. The next question:

[fol. 104] Q. And the train had blown its whistle previous to that?

A. The big whistle, the steam whistle.

Q. That is what I said. It blew its big whistle before it got to Scotland Street, and then after the big whistle blew then it blew its air whistle?

A. Yes. It hardly ever blows the steam whistle, but about once unless someone is waving down to stop, about once after he leaves the water tank down there.

A. Yes sir.

Q. This question was asked you:

Q. Are you sure whether the air whistle blew just between Scotland Street and the street south?

A. Well, he blows every evening because I flag that train every evening and he never has missed blowing that whistle no time.

Q. You made that statement, did you?
A. Yes sir.

Q. Well, do you remember about this particular case?
A. Yes, he blew it in this particular case. The wind was blowing and if you were not paying close attention you might not hear the whistle blow. The wind was blowing from the other way, blowing out of the west.
Q. And you could hear the air whistle at the street?
A. If you were standing out in the open you could hear it, yes sir.

Q. That is true, is it not?
A. Yes sir.

Mr. Campbell: Now I want you to listen particularly to this question. This was asked you by Mr. McLean at the Coroner's inquest:

Q. You did not hear the steam whistle blow after it got on this side of the water tank, north of the water tank?
[fol. 105] A. No sir.

Q. That is true, is it not?
A. It blew this side of the water tank.
Q. Then this statement is not correct about it.
A. Well, I heard the whistle blow between the station and the water tank.
Q. Do you remember this question being asked you by Mr. McLean?

Q. And did you not hear the steam whistle blow after it got on this side of the water tank, that is north of the water tank?

The Court: He is not asking you what the truth about the matter is, but whether you testified to that at that time.

Mr. Campbell:

Q. Mr. McLean asked you that question, did he not?
A. I don't remember whether he did or not.
Q. The Answer here is: "No sir", that is that it did not blow. Did you make that statement?
A. I don't remember.

E. H. BALDWIN, being duly sworn, deposed and testified as follows:

My name is E. H. Baldwin. I have lived in Dunedin, Florida, about 7 years. I am an electric acetylene welder. On March 9, 1931, I saw this accident. I was walking down Scotland Street just across Broadway, going east on the north side of the street, when this fellow came down Broadway and turned to the left going east on Scotland Street towards the railroad track and I seen him there and was watching him go up the railroad track. Of course, I don't believe he saw the train. He just drove right in front of the train and the train hit him. As well as I could tell he did not slow up or stop from the time I first saw him. I couldn't see that distance, whether he slowed up or not, but [fol. 106] I don't think he did. I heard the whistle and the bell ring. I heard the train coming up the track, I guess one-fourth of a mile down the tracks there. I was about 150 feet west from Broadway.

Cross-examination:

I was west of Broadway about 450 feet from the railroad. There was not a thing in the world between me and the railroad tracks except the car. There was not a soul in the world with me. I was not paying very much attention to the car until it got pretty close to the railroad track. I could see the back of the car. I know he slackened the speed of his car some, but not very much. I knew who was in the car. I saw them when they were on the track. He was on the same side of the street driving that I was. I was going up the left hand side. It was a sedan car. I could not see the train until it got to the crossing, but I could hear it. The first whistle I heard blow away down the track was a steam whistle. The next whistle I heard was a steam whistle. I did not hear any air whistle. I could not tell you how many times it blowed. But it blowed there, I imagine three times, that is just saying off hand. It was not over four blasts of the whistle. I don't imagine there was. I don't know where the train was when I first heard it because I couldn't see it. I could just hear it coming. It was a very windy day.

ROY OUTING (colored), being duly sworn, deposed and testified as follows:

My name is Roy Outing. I have lived in Dunedin five [fol. 107] years. I was there on March 9, 1931, about six o'clock at the railroad crossing, right where the accident happened at. I went to carry a little boy to see the train. I heard the whistle of the train that was coming and I went with this little boy. I just seen the train and the automobile hit. It was coming just when I was on this side (east) of the track. The car was coming from this (west) way, and I was on this (east) side of the train coming (north) this way. I saw the automobile before it got to the track, just as it made the turn coming up by the Bank from the Times office. From the time I first saw it up until the time of the collision, the automobile did not stop. It did not slacken up before it went up on the track. I heard the bell on the train ringing when it came up to the next street.

Cross-examination:

When I first heard the big steam whistle the train was down by the section house, about a mile below there, towards Clearwater. The water tank is right at the section house. That is not the last time I heard the big steam whistle blowing. I heard it blow the last time up there at the street. I don't know the name of the street. The street I was on was Scotland Street. The next street is Elbert Street, and the next street down below, I don't know its name. The last time the train blew the big steam whistle, [fol. 108] it was down about Elbert Street, that is one street below Albert Street. From Elbert Street to Scotland Street the big steam whistle didn't blow. I didn't hear anything but the bell ring. I was standing right at the switch in the northeast corner of Scotland Street and the Railroad crossing. I did not see Mr. Stringfellow slow up his speed and look both ways on this crossing. When he seen the train he was right on the tracks and he went to cut off and the train hit him right off the crossing. A little boy was with him on the front seat. I didn't notice where the little girl was. When I found her she was in a box in a crate in the automobile that had some groceries in it, on the back seat. All I heard that the train was doing was the bell ringing.

J. O. HILL, being duly sworn, deposed and testified as follows:

My name is J. O. Hill. I live at Dunedin, Florida. I am a station porter at the Atlantic Coast Line station and was such on March 9, 1931. At the time this accident happened, I was right in front of the depot. I saw the train coming and the car was approaching and they were both running about the same speed. The car might have been going a little faster and the train running, I would judge, about 15 miles an hour and the car was just entering upon the crossing, as near as I could tell from where I was when the train struck it. I saw the automobile before it entered the track about 20 feet west of the track. From the time I first saw it until the time of the accident the automobile did not slow up and stop. I did not see the automobile at any time stop before the accident. I was out there to put the mail on the train and was about 4 feet from the track where I generally am when I throw the mail on. I throw the mail on and they throw it off. The train did slow up for that purpose. The [fol. 109] bell was ringing. I heard it and could see it.

Cross-examination:

I have been working for the Atlantic Coast Line Railroad Company nearly six years and I am still with them. I was on the south side of Main Street and about 20 feet from where the train stopped, and the automobile was taken off the front of the engine. The engine came from Scotland Street to within 20 feet of Main Street where I was standing with the automobile pinned up in front of it. I don't know just what the distance is from Scotland Street up to Main Street. It must be about 325 feet. I heard the whistle and the bell. When I first heard it it was about one-half a mile away or more. I was inside the depot at the time I first heard it and I came immediately outside. I do not recall how many times I heard it blow after that. It blowed several times. I would say five or more. The whistle continually blew. I don't know if it was an air whistle or not. I heard the whistle blowing. I could not say if it was an air whistle or a steam whistle. I think I testified before the Coroner's inquest on the 10th day of March of last year, the day after it happened, but I understand since then that there was not an air whistle. On the

day after this took place I said it was an air whistle that I heard.

Mr. Campbell:

Q. Did you not state at the Coroner's inquest to this question, this answer:

A. He was blowing his air whistle. I don't believe I heard him blow the steam whistle after he passed the water tank.

Q. You made that statement, did you?
A. I don't think so.
Q. Do you not remember that this evidence was stenographically reported by an official court reporter there?

[fol. 110] The Court: You had better translate that.

Mr. Campbell:

Q. Was not this question asked you:

Q. But he was blowing the air whistle?
A. Yes sir.

Q. Did you make that statement?
A. I might have.
Q. You do not deny that, do you?
A. No, sir.

C. A. WINDHAM, being duly sworn, deposed and testified as follows:

My name is C. A. Windham. I live at Lakeland, Florida. I am an employee of the Atlantic Coast Line and have been for about 24 years as conductor and baggage master. On the date of the happening of this accident at Dunedin on March 9, 1931, I was on the train that was involved in this accident, on duty as baggage master. When I felt the air brakes go on and the emergency, I was standing in the door at the time and looking out and saw that they were dragging some object, and I climbed down the side step on the side of the car and before the train came to a full stop I was on the ground and on my way to the engine to see what

had happened. Before the train entered Scotland Street, it was going about 10, possibly 12 miles an hour. The whistle sounded, I would judge, about the time the engine entered this street. There were four blasts of the whistle sounded. I judge he started back possibly three or four hundred feet for the first blast. He had sounded at the other crossings before that. I could not say whether the bell was run when we struck the car but it was ringing after the train stopped.

Cross-examination:

I did not say positively that the whistle began to blow several crossings back. I was standing in the door with [fol. 111] the mail pouch in my hand. I had no reason to remember the number of whistles and the place where they were blown, but I can not help but hear them. I was not looking for an accident but we almost always know when the road crossings are being sounded. We get so used to it. When you are riding in the first car back of the engine you can not help but notice it. In going from Clearwater up to this town we cross quite a few street crossings. I don't believe there is any street real close to Scotland Street that I remember. I don't believe I remember any real close by on the south side. I don't know whether there is a street between the water tank and Scotland Street. In a way it is my business to be on the lookout at streets. We are always on the lookout for safety at all times. Before we entered Scotland Street, I recall distinctly that the crossing signal was sounded. I could not say how many distinct blasts there were from the water tank up to Scotland Street. There was one long and two shorts but the long sounded for this particular crossing. I would judge that we were just about going on Scotland Street when the last one sounded. I did not say it was just exactly at the same time the emergency brakes were on. When I heard the blast of the locomotive it was pretty close to the same time.

J. O. Hill, being recalled, further testified as follows:

I was on the witness stand yesterday. At the instance of counsel for defendant, I measured the distance from the Scotland Street crossing to the platform of the depot. I

measured 273 feet. My duties were to take the off-coming mail and place the on-going mail on the train. I perform that duty about 20 or 25 feet north of the platform.

Cross-examination:

I made this measurement yesterday afternoon from the north curb of Scotland street. Scotland Street is 20 feet wide. On the date of the accident preparatory to putting the mail on the train I was right out from the depot door [fol. 112] about 25 or something like that feet north of the platform. I was not in the street.

J. T. HODGES, being duly sworn as a witness for the defendant, testified as follows:

I am James T. Hodges. I am an employee of the Atlantic Coast Line Railroad Company and have been for about 33 years. The past 10 years I was road foreman of engines. Prior to that time I was locomotive engineer. I am pretty well acquainted with the characteristic condition of the tracks of the Atlantic Coast Line running through Dunedin. If there is any material changes in grade crossings, I am not. But I ran an engine over the track for a number of years. As to the grade and the tangent of the track there, I am. In the past, in my years of experience, I have made several tests as to what trains will do, with trains of different braking power and train resistance. I am familiar with train 132, engine No. 1503. Assuming a train going north equipped as that train was, so far as the engine was concerned, seven cars, baggage car, mail coach and day coach, and the rest Pullman cars, going at a rate of speed over the crossing or about the crossing just south of Dunedin station at the rate of twelve to fifteen miles an hour, the best distance that the train could be stopped in, using the quickest means to stop the train by putting it into emergency, I judge, would to 250 to 350 feet. You know there is a variation in there that could not be overcome because one train one day with the same brake equipment might stop in 200 feet and maybe 250 feet tomorrow. Taking the same train under the same conditions going 35 miles an hour, it could be stopped from

450 to 500 feet by using emergency, somewhere in that neighborhood. There might be a little variation in there as to distance.

Cross-examination:

I am familiar with the equipment of this engine. It [fol. 113] had a steam whistle on it. I couldn't tell you whether that particular engine was equipped with an air whistle or not at that time, as it is now. If the rails are dry and it was a sun-shiny day, that would have something to do with the space it would take the engine to stop when you put it in emergency and if you put sand on it it will still stop quicker. I assume that in this case that they put sand on the track and that the train was going 12 to 15 miles an hour. These cars are 120,000 to 150,000 pounds apiece, anywhere from 60 to 75 tons. You have seven of them and there is a 200 ton engine and you have to take into consideration all of the resistance that you have got to develop and put it to the rail to retard the movement of that train, and in moving that train 12 or 15 miles an hour you are lucky to stop it at 250 to 350 feet. 100 feet variation due to the fact that you will take the same train in ideal conditions today and you will put the emergency on at the same second at the same place and it will run 250 feet and under the same conditions tomorrow it may run 350 feet with the same equipment. Theoretically there is sixty per cent resistance. In an empty car the brakes are within about sixty per cent, and when the car is loaded the brake resistance goes down as low as fifteen per cent on some cars. The more people you put in a car the more resistance you would have.

W. T. McIlvaine, being duly sworn, deposed and testified as follows:

My name is W. T. McIlvaine. I am a conductor on the Atlantic Coast Line Railroad and have been for 31 years. I was the conductor on the train that was involved in this accident. The number of the engine was 1503. I did not see the automobile before it collided. At the time of the accident I was in the car right next to the engine. In my opinion the rate of speed the train was being operated at

at the time this train entered, or about the time it entered [fol. 114] Scotland Street, was between 10 and 12 or 13 miles an hour. As the train proceeded into Dunedin he blew the whistle and rang the bell. I could hear that.

Cross-examination:

As he approached the vicinity of Dunedin he blew the whistle and rang the bell at the crossing. There are two crossings before Scotland Street. He was ringing the bell when he blew for the station and just as he got pretty close to the first crossing he blew that road crossing and the bell was ringing. When he got to the first crossing after he passed the water tank, he blew the long whistle, I think I heard the big whistle blow just as we came to the other crossing at Albert Street. I heard it blow. I have no doubt in the world about it. I recall it blowing at each and every street. I watched it close. When the emergency brakes were applied he had got to the Scotland Street crossing and had put on a slight application of brakes. We were expecting to stop there and pick up a sack of mail. We did not come to a full stop. We would merely slow down at the depot and the mail was thrown on. This train never stops there until it is flagged, unless we have a passenger to put on. It only stops if somebody is getting on the train or we have somebody out of St. Petersburg. I have been running regular on this particular train for something over a year and I think the train was going between 10 and 12 miles an hour. I did not say it could not have been over 13. I heard the brakes going on and thought we would get a passenger and went out and opened the door of the first class car; when the brakes went on the front of the engine was just over that crossing. He hadn't put the brakes on. The brakes went on good and the engine stopped about at the loading platform. I was in a combination baggage and passenger car. The first car back of the tender. The next car was a standard coach and the next Pullman, and the next dining car, and the next four cars Pullman cars, making seven cars in all.

[fol. 115] Whereupon the defendant rested.

Thereupon the plaintiff, further to maintain the issues on her behalf, in rebuttal, produced the following evidence:

Mrs. George Smart, being duly sworn as a witness for plaintiff in rebuttal, testified as follows:

My name is Mrs. George Smart. I remember the evening of March 9, 1932. Mrs. Mabel Seeley had an apartment at my home. I was at home the day of the accident at the Scotland Street crossing. I heard the train when it passed the Scotland Street crossing. It is 181 feet from the corner of my house up to the railroad. I had a conversation with Mrs. Mabel L. Seeley 10 of 15 minutes after this accident, in my front yard.

Counsel for plaintiff then asked the witness the following question:

Q. Did Mrs. Seeley say to you:

"I thought Mr. Stringfellow saw the train. He drove up pretty close to the track and almost stopped, looked south and then north and then speeded ahead to cross; I thought he saw the train, but undoubtedly he did not."

A. That is the very words she told me.

Cross-examination:

I know both Mrs. Stringfellow and her husband. They rented a place from me. They were in arrears some for their rent.

Thereupon the plaintiff, further to maintain the issues [fol. 116] on her behalf and with the consent of the Court and the counsel for the defendant, produced and offered the following evidence in chief:

Harry Lishness, being recalled, testified as follows:

I was familar with the condition of the Scotland Street crossing before the bushes were cut on or near the right of way. Looking down the railroad tracks while standing at the stop signal on the west side of the track on Scotland Street, before these bushes were cut, I could see down the railroad tracks about 65 feet. From Albert Street to the

warehouse where I testified I was sitting at the time the accident occurred, is 33 paces of just ordinary steps. From that window to the Scotland Street crossing it is 89 steps.

(No cross-examination.)

W. H. JAMES, being duly sworn, deposed and testified as follows:

My name is W. H. James. I live in Dunedin and own a grocery store. I know Mrs. Mabel L. Seeley. On the afternoon of the Stringfellow accident on the 9th day of March, 1931, Mrs. Seeley came in the store. I had a conversation with her and she said: "I just saw a terrible wreck."

Whereupon counsel for plaintiff asked the witness the following question:

Q. Did she not say in substance that she was waiting at the crossing and that she heard the Stringfellow car approaching and that the car made a noise like it stopped and then the car drove onto the track and was struck by the train? Did she say that?

A. Yes.

(No cross-examination.)

[fol. 117] Thereupon three photographs, plaintiff's exhibits 6, 7 and 8, were admitted in evidence without objection as a correct portrayal of the permanent physical conditions that existed at the time of the accident. (These exhibits ordered transmitted in connection with the transcript.)

Mrs. CRYSTAL TOWNE, being recalled, testified as follows:

I drive an automobile and have driven on parallel streets with the railroad tracks and in making trips, I often notice the speed of trains in comparison with the speedometer on my car, and in that way, I have had an opportunity to judge the speed of trains. In my opinion, when I saw the

train at Scotland Street, that caused this accident, it was running between forty and fifty miles an hour.

(No cross-examination.)

[fol. 118] Whereupon the plaintiff rested.

(Both parties having concluded and submitted their evidence, thereupon, in the absence of the Jury, the defendant made the following Motion:)

DEFENDANT'S MOTION FOR DIRECTED VERDICT

Mr. Barton: If your honor please, at the conclusion of all of the evidence in the case, the defendant now moves the Court to direct a verdict for the defendant upon the grounds: That there is no evidence upon which a verdict could be predicated, particularly speaking of the Guy Stringfellow case, for his death, in that there is no evidence of any negligent act which could have been the proximate cause or was the proximate cause of this injury; Second, it is shown by the undisputed evidence that the proximate cause of this injury, directing the Court's attention to the proximate cause not contributory negligence, that the proximate cause of this injury was the failure of the driver of the vehicle to take the necessary precaution or any precaution to determine whether or not the train was approaching, the evidence conclusively showing that he drove up there and raced with the train and tried to beat it and unfortunately lost. It is not worth while to take time to call your Honor's attention to the many cases.

RULING ON MOTION FOR DIRECTED VERDICT

The Court: Gentlemen, between the Supreme Court of the United States and the Circuit Court of Appeals and the Supreme Court of Florida, they have got the judge between the devil and the deep blue sea. The Supreme Court of the United States says that failure to stop, look and listen is negligence. In a case that went up from Ohio, they said that would defeat any recovery. Now the Circuit Court of Appeals, after that decision was rendered, have held that in Florida under this Apportionment statute that it would not necessarily defeat a recovery, and I

think that it is the better rule where the evidence shows that the proximate cause of the injury was the negligence of the railroad and that failure to stop, look and listen was only contributory; but if the failure to stop, look and listen is the ultimate cause, then I am satisfied that there can be no recovery. The evidence is practically undisputed and overwhelming that this automobile did not stop. [fol. 119] Whether the man looked and listened does not appear but if he did look he did not look to any purpose. There is some talk about the Ford rattling. The probabilities are that the Ford was rattling so that he could not hear anything; that is simply speculation. I cannot put my decision of that. So we come back to the question as to whether the railroad company was negligent.

The Supreme Court of the United States has held that a Georgia statute of which our Florida statute is an exact copy as far as I am advised—I never sat down and compared them—but the statute which casts the presumption of negligence on the railroad company, is unconstitutional and void in the Georgia case.

Now I understand that the Court of Appeals has upheld the Florida statute on account of the different construction given to the statute by the courts of Florida and the courts of Georgia. The courts in Georgia let the presumption go to the jury as evidence to be weighed in connection with the evidence given to rebut the presumption whereas the Florida court holds that it just merely shifts the burden and has no evidentuary effect at all. If the evidence is not produced to overcome the presumption the presumption stays there but where the evidence is produced to overcome the presumption it loses all of its effect.

Now the Supreme Court has repeatedly held that the court must justify all of the evidence and when you take all of the evidence and consider it as a whole with all reasonable and logical deductions that can be drawn therefrom, a verdict of the jury could not be sustained, it is the duty of the court to direct a verdict.

Now the plaintiff proves enough here to cast the burden on the defendant, and the defendant produced evidence that the bell was rung and the whistle was blown and produced evidence as to a very reasonable rate of speed. Some of the plaintiff's witnesses swore that they heard a whistle. And all that you have to rebut that is the evidence offered

[fol. 120] by the plaintiff, the three witnesses who put this train running from about around fifty and sixty miles an hour and one or two that they did not hear the bell. Now that testimony that put it up around fifty or sixty miles an hour just shows that they did not know what they were talking about. If they had put it above thirty they would not know what they are talking about. They stretched it too much; they overreached themselves.

I am clearly of the opinion, taking the evidence as a whole, that the railroad company has carried the burden which is cast upon it to disprove the negligence. I am under my oath as judge to decide one way or the other as it appears to me. I cannot see that there is any negligence here upon the part of the railroad, and that it in any way contributed to this unfortunate accident, therefore you may prepare a verdict in each one of the cases.

Mr. Barton: I desire, of course, to make the same motion for each of the cases.

The Court: Yes. Contributory negligence is not pleaded and could not be pleaded as to the children anyway. The court is of the opinion that the railroad company has overcome the presumption.

Exception was noted by the plaintiff to the ruling of the Court and to the peremptory instruction.

Thereupon the jury returned into court and the Court instructed them as follows:

The Court: GENTLEMEN OF THE JURY, I hope you have been having a better time than I have. You were relieved from listening to the argument for a while and I had to listen to it.

In this court the judge is required to assume some re-[fol. 121] sponsibility. He is not a mere referee of a fair fight to sit up here and let the jury pass upon the questions and the court has decided that under all of the evidence here as a matter of law that neither of these plaintiffs could recover against the railroad company. This is an unfortunate accident, we all sympathize with the widow, but there are certain rules of law that control these matters and the court is responsible for the administration of these rules of law and you are not, consequently I direct some one of your number to sign a verdict of not guilty in

each one of these cases. That relieves you of all responsibility.

ORDER APPROVING BILL OF EXCEPTIONS

Inasmuch as the ruling and exceptions specified in the foregoing bill does not appear in the record of said cause, I Alexander Akerman, Judge of said Court who presided at the trial thereof, after due notice given the defendant herein, have settled and signed the bill and have ordered that the same be made a part of the record of said cause this 20 day of April, A. D. 1932.

Alexander Akerman, Judge.

The foregoing bill of exceptions approved.

Bussey, Mann & Barton, by McKinney Barton, Attorneys for Defendants.

[fol. 122] IN UNITED STATES DISTRICT COURT

No. 2730, No. 2731, No. 2732, No. 2733, No. 2734

[Title omitted]

[fol. 123] ORDER TO TRANSMIT PHOTOGRAPHIC EXHIBITS—April 20, 1932

It appearing to the Court that it is proper and necessary that all photographs introduced in evidence in the above causes, referred to in the evidence and the bill of exceptions as plaintiff's exhibits numbered 2, 3, 4, 5, 6, 7 and 8, and as defendant's exhibits, numbered A. B, C. D, E and F, should be inspected by the United States Circuit Court of Appeals as a part of the record herein.

It is therefore ordered that the said exhibits be transmitted by the Clerk of said Court in original form in connection with the statement of evidence in the bill of exceptions.

Done and ordered at Tampa, Florida, this the 20th day of April, A. D. 1932.

Alexander Akerman, Judge.

[fols. 124-127] Citation, in usual form, showing service on James R. Bussey et al., filed April 20, 1932, omitted in printing.

[fol. 128] IN UNITED STATES DISTRICT COURT

No. 2730; No. 2731, No. 2732, No. 2733, No. 2734

[Title omitted]

[fol. 129] PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed April 20, 1932

To the Clerk of the aforesaid court:

You are requested to make transcript of record to be filed in the United States Circuit Court of Appeals for the Fifth Circuit pursuant to an appeal allowed in the above entitled causes, and to include in such transcript of record the following, and no other, papers, in each of the above causes:

1. Amended Declaration.
2. Plea.
3. Verdict of the Jury.
4. Final Judgment.
5. Order Extending time and term of Court for purpose of filing bill of exception.
6. Bill of Exceptions.
7. Order Directing Clerk to transmit photographic exhibits.
8. Petition for Appeal.
9. Assignment of Errors.
10. Order allowing Appeal.
11. Order allowing Appeal forma pauperis.
12. Citation with the Acceptance of Service.
13. These Directions with Acceptance of Service.

Doyle Campbell, Wm. C. McLean, Attorneys for Appellant.

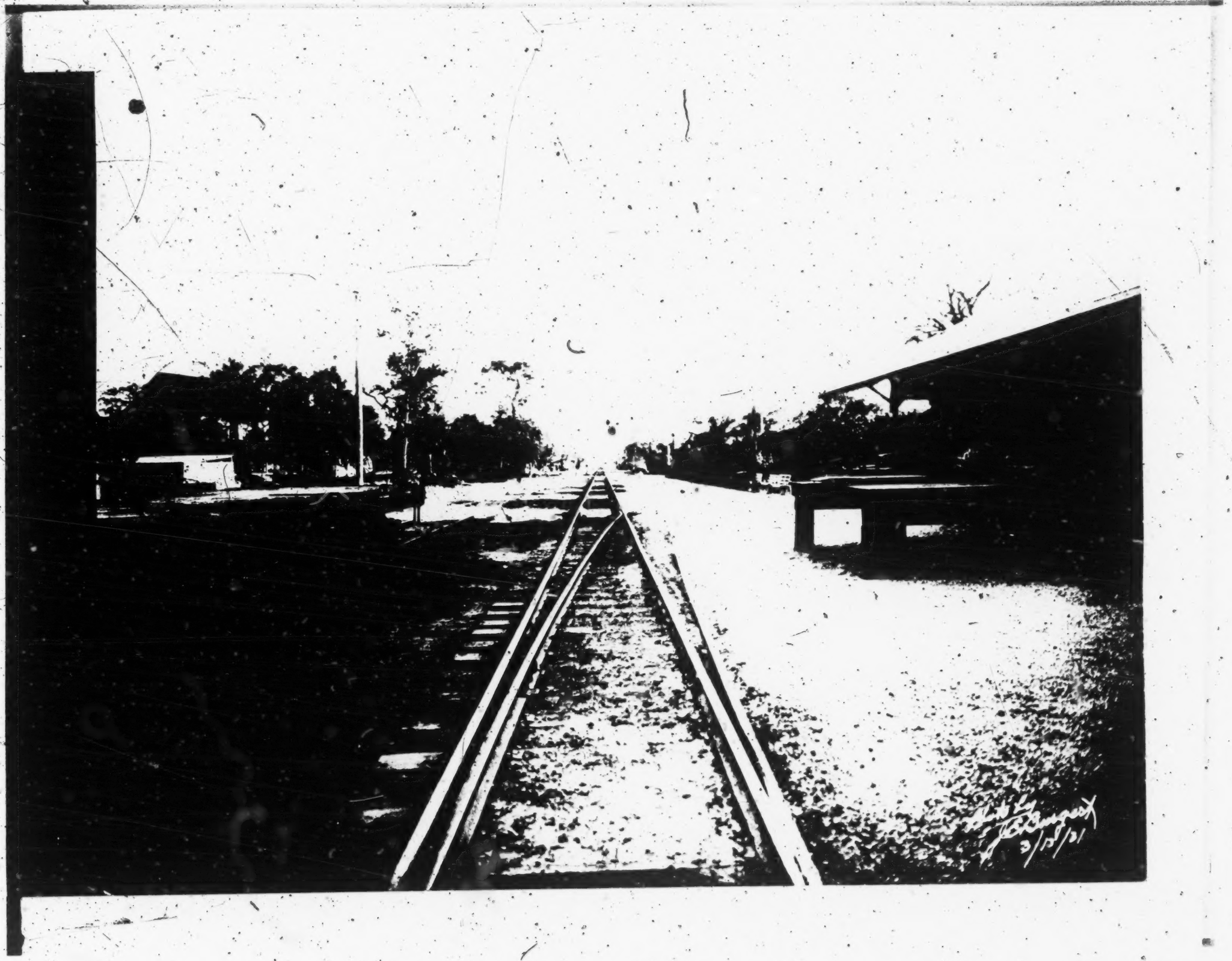
We hereby accept service of a copy of the foregoing directions this the 20th day of April, A. D. 1932.

Bussey, Mann & Barton, by McKinney Barton, Attorneys for Appellee.

[fols. 130 & 131] Clerk's certificate to foregoing transcript omitted in printing.

(Here follow photographs, marked 131a to 131m, inc.)

RAIL
CROSSING



Camera 40 ft. from center of crossing
Photo by
E. Burgert
3/11/31

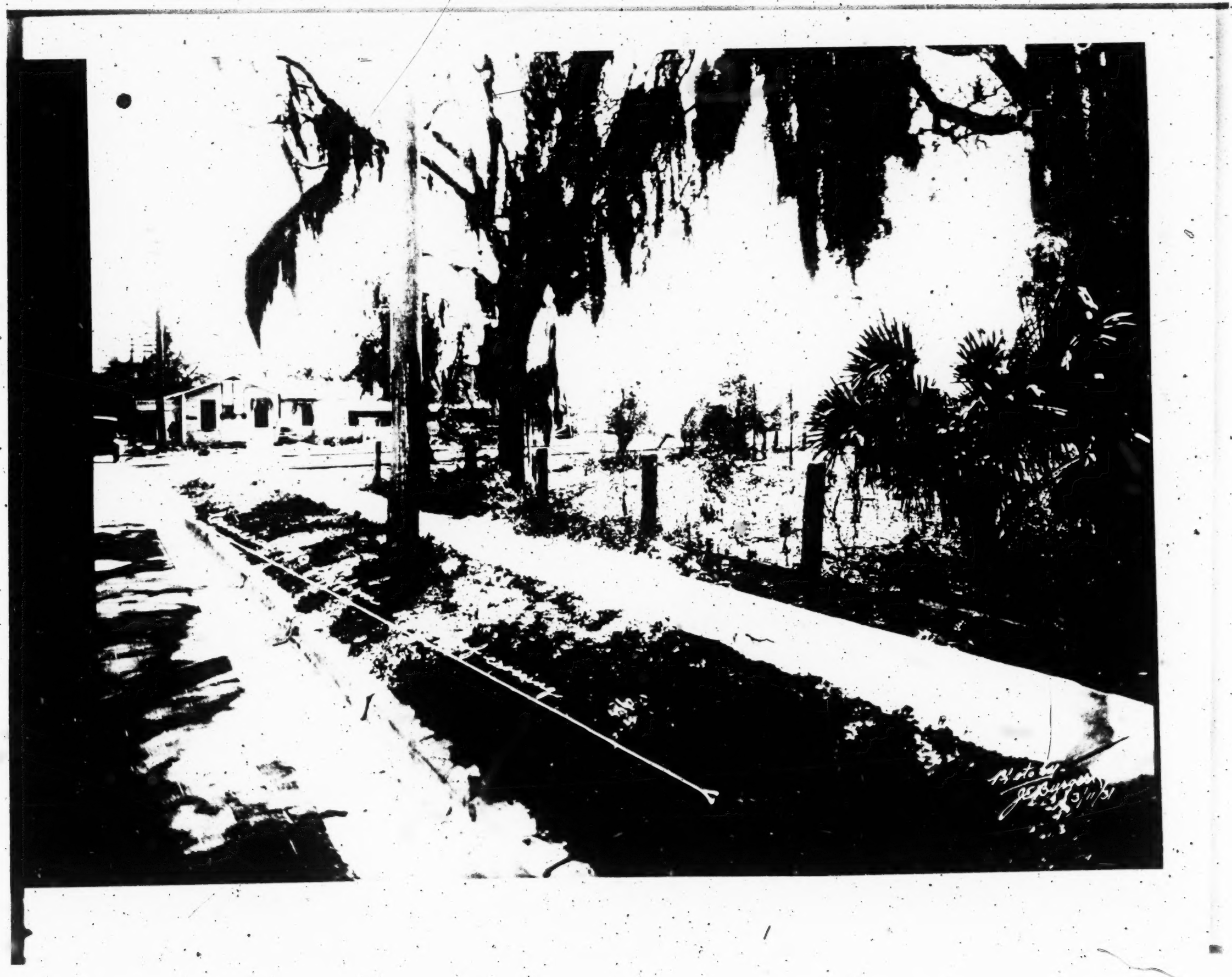


Photo by
3/11/51

CROSSING
ROAD
ATLANTIC COAST LINE
3 TRACKS

MAR-10-1931
SUNSET CAMERA SHOP
BY ATREN

[fol. 132] Minute entry of argument and submission, March 2, 1933, omitted in printing.

[fol. 133] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 6617

SARAH ELIZABETH STRINGFELLOW, a Widow, and as Administratrix, etc., Appellant,

versus

ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Appellee

In Forma Pauperis

Appeal from the District Court of the United States for the Southern District of Florida

Before Bryan, Sibley, and Hutcheson, Circuit Judges

OPINION—Filed March 31, 1933

BRYAN, Circuit Judge:

Appellant, in her own right as widow and as administratrix, brought separate actions, which were consolidated for trial, against the appellee railroad company for negli- [fol. 134] gently running its train upon and fatally injuring her husband and two minor children at a street crossing in the town of Dunedin, Florida. Negligence was alleged (1) in failing to give warning of the approach of the train by sounding the whistle or ringing the bell of the engine, and (2) in running the train upon the street crossing at a dangerous rate of speed. Appellee pleaded not guilty and at the close of all the evidence the trial court directed a verdict in its favor upon the ground that the injuries complained of were caused solely by the negligence of appellant's husband. Appellant contends in support of her assignments that it was error to take the case away from the jury.

The accident, which resulted in the injuries alleged, occurred in the daytime at a grade crossing where Scotland

street intersects the railroad right-of-way at right angles, the street extending east and west and the right-of-way north and south. On the right-of-way the main line was flanked on either side by a side track. To the south of the crossing the main line was straight for half a mile or more, but the view in that direction of one going east on the street was cut off by trees until the west side track, within 20 feet of the main line, was reached, at which point the view to the south was open and unobstructed. At the time of the accident appellant's husband was driving his automobile, in which his children, one seven, and the other nine, years of age, were riding with him, toward the east across the intersection; and the train was coming from the south. The train was a few minutes late, and was not due to stop at Dunedin. A strong wind from the northwest interfered with the hearing of any one at the crossing who might be listening for the rumble of the train, or for any warning that might have been given by whistle or bell. The evidence was in hopeless conflict as to whether the whistle [fol. 135] was sounded or the bell was rung, and also as to the speed of the train. Several witnesses for appellant who were near the place of the accident and in position to hear testified that they heard no whistle or bell; and they gave various estimates of the rate of speed, ranging from 30 to 50 miles per hour. Two of these witnesses cited as evidence of their ability to estimate speed speedometer tests which they said they had made, while traveling by automobile on highways parallel with railroad tracks, of the speed of trains going in the same direction as they were. On the other hand witnesses for appellee, particularly the engineer, fireman and members of the train crew, testified that as the train approached Scotland street the last of four blasts of the whistle was sounded, and that the bell was being rung by an automatic ringer from the time the train reached the fourth street south of Scotland street until after the accident. Members of the train crew also testified that the train had slackened speed as it passed through Dunedin, and that it was running at a rate not exceeding 10 or 12 miles per hour as it approached Scotland street. The fireman testified that he saw appellant's husband drive upon the crossing about 60 feet in front of the engine, and that he called to the engineer who immediately put on the emergency brakes. The engineer testified that

he did not see the automobile because it approached from the west and he was on the east side of the engine, but that he applied the emergency brakes as soon as the fireman called out to him and stopped the train as quickly as was possible. The engine proceeded about 100 yards north of Scotland street before it was brought to a standstill. Several witnesses for appellee testified that appellant's husband drove across the intersection at a speed of 10 to 15 miles per hour; but the testimony as a whole leaves it uncertain whether he stopped or slackened speed when he arrived at the crossing, and whether he actually saw the train.

[fol. 136] Compiled General Laws of Florida provide:

"A railroad company shall be liable for any damage done to persons, stock or other property, by the running of the locomotives, or cars, or other machinery of such company, or for damage done by any person in the employ and service of such company, unless the company shall make it appear that their agents have exercised all ordinary and reasonable care and diligence, the presumption in all cases being against the company." § 7051.

"No person shall recover damages from a railroad company for injury to himself or his property, where the same is done by his consent, or is caused by his own negligence. If the complainant and the agents of the company are both at fault the former may recover, but the damages shall be diminished or increased by the jury in proportion to the amount of default attributable to him." § 7052.

It is plain that under § 7051 a prima facie case was made out. It is appellee's contention that the presumption of its negligence, which arose under that section, upon proof of the injuries as alleged, was overcome by further proof which disclosed that those injuries were caused solely by the negligence of the injured persons, and that the case presented is not one which calls for the application of the rule prescribed in § 7052 for apportionment of damages, because no fault was attributable to it. Of course appellant could not recover for the death of any party who could not if living have recovered damages because of his injury. In so far as the case depends upon appellant's right to recover for the death of her husband, we are of opinion that it was not error to direct a verdict for appellee. Her hus-

band as driver of the automobile was under the duty of exercising the care and caution which a reasonably prudent man would have displayed under the same or similar cir-
[fol. 137] cumstances. It therefore was his duty to use his senses of sight and hearing before undertaking to cross the railroad tracks. If when he had passed the trees and had an open view down the track he had looked he would have seen the train and could have avoided the collision. A careful and prudent driver of an automobile would not under the circumstances have undertaken to drive over the crossing in front of the approaching train. Notwithstanding § 7052 he could not have recovered for an injury, and so recovery cannot he had on account of his death. S. A. L. Ry. v. Tomberlin, 70 Fla. 435; Egley v. S. A. L. Ry., 84 Fla. 147; A. C. L. R. R. Co. v. Gornto, 89 Fla 97; F. E. C. Ry. v. Davis, 96 Fla. 171; Covington v. S. A. L. Ry., 99 Fla. 1102; Southern Ry. Co. v. Mann, — Fla. —, 108 Sou. 889 In our opinion the right of recovery for the deaths of the children should have been submitted to the jury. The children were guilty of no negligence; and their father's negligence could not be imputed to them. The judgment is defended as to them only on the theory that the father's negligence was the sole proximate cause of their deaths. But the jury might reasonably have concluded that their deaths were caused by the combined or concurrent negligence of their father and the railroad company. There was substantial evidence, tending to prove that no warning by whistle or bell was given and that the train was being operated at a negligent and dangerous rate of speed, to support the conclusion that the collision would not have occurred if the warning had been given or if the train had been operated at a more moderate and reasonable rate of speed. It was for the jury, not the court, to say whether it was negligence to run the train through a populous community without warning, or at a speed so great that it could not be stopped within less than 100 yards; especially if because of a strong headwind it was made difficult for those using the street intersection to hear a train approach-
[fol. 138] ing from the south. It is true that in Covington v. S. A. L. Ry., supra, a case somewhat similar to this, the Supreme Court of Florida held that the failure of the driver of the automobile to stop at the crossing for an approaching train was such negligence as precluded recovery

of damages by his nine-year old son who was also riding in the automobile. But the driver in that case could have seen the train at a distance of 75 feet from the crossing, whereas in this case the view was much more limited. Besides, there it was fairly inferable from the pleadings and the evidence that the driver actually saw the train, while here it was open for the jury to find that appellant's husband did not know or realize that a train was approaching. It does not appear in this case that the driver was racing with the train in an attempt to pass ahead of it over the crossing. The Covington case does not purport in any wise to limit or overrule the earlier case of S. A. L. Ry. v. Watson, 94 Fla. 571, where it was said: "There may be concurrent causes of a single injury—concurrent negligence of two separate and distinct agencies—which, operating contemporaneously, together constitute the efficient proximate cause of the injury inflicted, and without either one of which the harm would not have been done." The just quoted language was used in a case in which the plaintiff was suing to recover damages for an injury which she sustained, in rejecting a contention that the negligence of plaintiff's husband, who was driving an automobile in which she was riding, was the sole proximate cause of a collision between the automobile and a train at a highway crossing. That appellee, upon evidence adduced by appellant, could have been held by the jury to be liable, is conclusively established, as it seems to us, by the Supreme Court of the United States. In Little v. Hackett, 116 U. S. 366, a passenger in a hired carriage was injured when the driver negligently turned his horses upon a railroad crossing without taking the precaution to ascertain that a train [fol. 139] was coming. The railroad company was held liable to the passenger because of its concurrent negligence in failing to give signals of its approach, or to have a flagman on duty. In disposing of that branch of the case the Court said: "The evidence tended to show that the accident was the result of the concurring negligence of the managers of the train and of the driver of the carriage—of the managers of the train in not giving the usual signals of its approach by ringing a bell and blowing a whistle, and in not having a flagman on duty; and of the driver of the carriage in turning the horses upon the track without

proper precautions to ascertain whether the train was coming." In Kreigh v. Westinghouse & Co., 214 U. S. 249, it was held that it was a question for the jury to determine whether the operation of a defective derrick was not attributable to faults of construction and equipment, for which the master would be liable, as well as to negligent handling by plaintiff's fellow servants. Our conclusion is that the jury would have been warranted by the evidence in finding that appellee was liable in damages to appellant for the deaths of her children.

The judgment is reversed, and the cause remanded for further proceedings not inconsistent with this opinion.

IN UNITED STATES CIRCUIT COURT OF APPEALS

SEPARATE OPINION OF HUTCHESON, CIRCUIT JUDGE—Filed March 31, 1933

I concur with the majority in their conclusion that "the right of recovery for the deaths of plaintiff's children [fol. 140] should have been submitted to the jury". I concur with them in the reasons advanced in support of that conclusion, that the evidence did not establish, as matter of law, that "their father's negligence was the sole proximate cause of their deaths. That the jury might reasonably have concluded that their deaths were caused by the contributing or concurrent negligence of their father and the railroad company." Because I do concur in these conclusions and their supporting reasons, I am compelled to dissent from the other conclusion of the majority, that the evidence makes a case under which, as matter of law, there could be no recovery for the death of plaintiff's husband. I not only think this conclusion is logically indefensible, but I think that it can be demonstrated that it is equally opposed to the words of the Florida statutes and to the meaning and effect given to those words by the Florida decisions.

By the words of Sec. 7051 of the Florida statutes quoted in the majority opinion, the burden in crossing accidents is on railway companies to show absence of negligence on their part. By the words of Sec. 7052 of the Florida stat-

utes, also quoted, where the plaintiff shows that the negligence or consent of the complainant is the sole cause of the injury, defendant's burden is fully sustained, and no recovery may be had. Where it shows no more than that complainant and defendant are both at fault, its burden is only partially sustained, and the plaintiff, though his damages are diminished by the amount of his fault, may still recover.

I cannot find within the ambit of the statutory words, any support for the conclusion of the majority, that though the negligence of the driver is not the sole proximate cause, but only a concurring or contributing cause of the injury, the degree of his contributory negligence may be so much greater than that of defendant as to completely bar his [fol. 141] recovery. The statutes of Arkansas expressly provide that contributory negligence shall not prevent recovery when it is of less degree than defendant's negligence. Sec. 8575 Crawford & Moses' Digest; Bradley vs. Mo. Pacific R. R., 288 Fed. 496. While in Georgia by construction the courts have imposed this meaning on a statute having the same words as the Florida statute. Lamb vs. McAfee, 90 S. E. 105. This rule, however, does not obtain in Florida. In Atlantic Coast Line Ry. vs. Watkins, 121 So. 95, where recovery was allowed, the court said: "While we think that both the company and its engineer were at fault in the lack of reasonable prudence, the degree of recklessness and lack of prudence shown by Mr. Watkins (for whose death plaintiff sued) was vastly greater."

I have carefully examined the Florida decisions from the beginning. They have without varying held, as to crossing accidents, that where both plaintiff and defendant are legally negligent, that is, where the negligence of each proximately contributes or concurs to produce the injury, plaintiff and those in the vehicle with him may recover without regard to the amount or degree of fault of the plaintiff. That where plaintiff's negligence is the sole proximate cause of the injury, neither the plaintiff nor any of those in the vehicle with him may recover, for the reason that in that case defendant has rebutted the presumption of negligence cast on it by the statute and shown itself free from fault.

Every decision cited by the majority bases on Atlantic Coast Line Ry. vs. Miller, 44 So. 249. Back of it are two

decisions to the same effect. In an attempted demonstration of this position, I shall set out brief extracts from the cases, italicizing the controlling words.

"The proofs show conclusively, that the injury to the plaintiff on this occasion resulted *solely and entirely* from [fol. 142] her own reckless, careless and negligent act of attempting to cross the track immediately in front of a moving locomotive. * * * Under these circumstances she is by law not entitled to recover from the railroad company for the injuries so received. * * * *There is no evidence of any negligence* on the part of the defendant company *that was the contributing cause of,* or *contributed to, the bringing about of* the injury to the plaintiff. On the other hand the evidence showed affirmatively that *it was not guilty of any negligence that contributed to the production* of any injury to plaintiff, but the plaintiff's own testimony showed that the accident and injury to her resulted *solely from her own recklessness and imprudence.* Seaboard Air Line Ry. Co. vs. Barwick, 41 So. 71.

"*In order to the recovery of damages negligence of the railroad company must have existed and must have been the proximate cause of the injury,* for if the heedlessness or lack of prudence of the party injured *was the sole proximate cause of the injury, he cannot recover damages however negligent the railroad company might otherwise have been.*" Seaboard Air Line Ry. Co. vs. Smith, 43 So. 240.

"Under our statute the defendant railroad company is liable for all injury to persons and property caused by the running of its engines and cars, unless the company shall show that it has used all ordinary care and diligence upon the occasion to avoid or prevent the injury. *There was no carelessness or negligence on the part of defendant shown or proven by the plaintiff that contributed to the bringing about of the injury, and the unshaken and uncontradicted* [fol. 143] *evidence for the defense affirmatively showed that no such negligence was attributable to the defendant, but that the deceased brought down the shocking accident upon himself solely by his careless driving upon the defendant's railway track* immediately in front of a rapidly approaching train, of whose presence he must have known, that was too close upon him when he first got upon the track to be stopped by any known human agency, without

coming in violent collision with him." Atlantic Coast Line Ry. vs. Miller, 44 So. 249.

"Conceding that the plaintiff's own testimony *shows negligence on her part, as there was some evidence tending to show negligence in the fireman, the case should have been submitted to the jury to determine the liability of the defendant, if any, and if damages are allowed, to diminish them in proportion to the amount of default attributable to plaintiff.*" Johnson vs. L. & N., 52 So. 197.

"The imprudence of the plaintiff in heedlessly riding his motorcycle directly in front of an approaching train * * * exhibited a lack of prudence which the known risks demanded he should exercise. The engineer had the right to presume * * * that he would not attempt to cross the track ahead of the train with such a narrow margin of time to accomplish it. Under such circumstances, the speed of the train could not be considered *the proximate cause of the injury.* Atlantic Coast Line Ry. vs. Miller, 44 So. 247." S. A. L. vs. Tomberlin, 70 So. 347.

"The negligence of the plaintiff in *undertaking to cross the track under the circumstances was very great. It would not be wrong to say it amounted to heedlessness. We think* [fol. 144] *that such heedlessness or lack of prudence amounting to a positive disregard of danger was the sole proximate cause of the injury.*" L. & N. Ry. vs. Padgett, 70 So. 999.

"The immediate cause of the injury was the choking down of plaintiff's engine causing his car to stop on the railroad track. With that the railroad had nothing to do and in no way contributed to it. * * * If the engine of the automobile had not choked down when it got on the track, the accident would not have occurred. This was the proximate cause of the accident and the railroad was not guilty of negligence in not guarding against the possibility of the automobile breaking down when crossing its track." L. & N. vs. Harrison, 83 So. 89.

In Egley vs. S. A. L. Ry. Co., 84 Fla. 147, the judgment of the court was "affirmed on the authority of S. A. L. vs. Tomberlin, 70 So. 437; L. & N. vs. Padgett, 70 So. 998."

In A. C. L. Ry. vs. Gornto, 89 Fla. 99, the judgment was "reversed upon authority of" the Egley, Padgett and Tomberlin cases.

"It seems clear that the injury was caused by the plaintiff's own negligence, since if they had looked down the track they would have seen the train before going so near the track that the injury was inevitable * * * *Had there been negligence of the defendant railroad company in operating its train as alleged, which appreciably contributed to causing the injury, the defendant would be liable for damages under the statute, even though negligence of the plaintiff also proximately contributed to the injury.*" Florida East Coast Ry. vs. Davis, 117 So. 844.

[fol. 145] "*By the well established rule of this court, the record not only exhibits that degree of flagrant carelessness on the part of plaintiff as would bar recovery, but we think it meets and rebuts the presumption of negligence cast on defendant by the law.*" Southern Ry. vs. Mann, 108 So. 890.

"*Although the plaintiff was not under the evidence chargeable with the contributory negligence of her husband, yet if he was negligent in driving the automobile upon the track in front of the approaching railroad cars, and this negligence on his part was the sole proximate cause of the collision, plaintiff could not recover.*". S. A. L. Ry. vs. Watson, 113 So. 719.

Three late Florida cases, collecting up, analyzing and stating the rule of the Florida cases in accordance with this view, are Germak vs. Florida East Coast Ry., 117 So. 391; Atlantic Coast Line R. Co. vs. Watkins, 121 So. 95; Covington vs. S. A. L. Ry., 99 Fla. 1102. In the Germak case, the court, because of the Florida statute, refused to follow the rule of the Goodman case. It declared that the effect of the Florida statute is

"If it appears that the injury was caused solely by the negligence of the party injured, there can be no recovery, and if both the injured and the employees of the company were at fault in causing the injury, there may be a recovery but the damages will be reduced in proportion to the contributory negligence of the injured party."

The Watkins case, a case in my opinion undistinguishable from this, was a suit by a widow for the death of her husband in a crossing accident. The statute was re-examined in the light of the authorities, and it was held that though

[fol. 146] the evidence showed that the degree "of recklessness and lack of prudence shown by plaintiff's decedent" was "vastly greater" than the negligence of the defendant, plaintiff could recover, her damages however, to be greatly diminished because of that fault.

In Covington vs. S. A. L. Ry., 99 Fla. 1105, the Supreme Court held that a child injured in a crossing accident while in a car which his father was driving, was not entitled to recover, because his father's negligence was the sole proximate cause of the injury. It approved the language of the District Judge—"There can be no doubt of these facts, and how could it be possible that any negligent act of the defendant contributed to the injury, I cannot see." While in his concurring opinion Brown, J. said:

"The evidence so strongly preponderated to sustain the plea that the collision and injury was *due solely to the negligence of the father*, that this court would not be authorized in holding the lower court in error in granting the motion for new trial."

In Claughton vs. Atlantic Coast Ry., 47 Fed. (2) 679, this court correctly announced and applied the Florida rule that while the sole negligence of a driver is a bar to recovery for a crossing injury, contributory negligence is not. Such negligence bars neither the driver nor those in the vehicle with him. It merely diminishes the amount of the recovery of those negligent or responsible for the negligence. Bradley vs. Mo. Pac. Ry., 288 Fed. 484.

The opinion of the majority advances a third view as maintainable in Florida, that there are degrees of contributory negligence, and that a driver may be so contributorily negligent as that though the recovery of those in the car with him will not be barred because his negligence is not [fol. 147] the sole but a concurring proximate cause of the injury, his own recovery will be.

I find no warrant in the Florida statute nor in any of its decisions, for this view. I think it overrules the Claughton case. I respectfully dissent from it.

[fol. 148] IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 6617

SARAH ELIZABETH STRINGFELLOW, a Widow, and as Administratrix, etc.,

versus

ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation

JUDGMENT—March 31, 1933

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court;

It is further ordered and adjudged that the appellee, Atlantic Coast Line Railroad Company, a corporation, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

"Hutcheson, Circuit Judge, concurs in part and dissents in part."

[fol. 149] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 6617

[Title omitted]

MOTION OF APPELLANT FOR SEVERANCE—Filed April 13, 1933

And now comes the appellant in the above styled cause, by her undersigned solicitor, and shows unto the court as follows:

1. That the appellant in her own right as a widow and as administratrix brought five separate actions in the United

States District Court for the Southern District of Florida, Tampa Division, against the appellee, Atlantic Coast Line Railroad Company (Tr. pp. 3, 15, 26, 37, 48).

2. That the District Court of its own motion directed the Clerk of said Court to enter an order consolidating all of said causes for trial (Tr. 77).

3. That in each of said cases separate verdicts and separate judgments were entered (Tr. 6-64).

4. That in each of said cases the appellant and plaintiff took a separate appeal to this Court (Tr. 68-71).

[fol. 150] 5. That an appeal in each of said cases was taken to this court on a single transcript and docketed in this court and argued as one case and were by this court, on the 31st day of March, 1933, disposed of by a single written opinion.

6. The appellant Sarah Elizabeth Stringfellow a widow, plaintiff in the court below in case No. 2733 (Tr. 37-46) in her own right as widow seeking to recover damages against the appellee and defendant for the death of her husband, Guy Stringfellow, conceiving herself aggrieved by the decision and opinion of this court, entered herein on the 31st day of March, 1933, and desires to file a petition for a re-hearing only insofar as said decision affects the case herein specifically referred to in this paragraph and in the event such re-hearing be denied to file in the Supreme Court of the United States a petition for a writ of certiorari to this court.

7. That the rights of the appellants in each of the four remaining cases are so separate from the rights of the appellant, Sarah Elizabeth Stringfellow, a widow, in her own right seeking damages for the death of her husband, Guy Stringfellow, Case No. 2733 (Tr. 37-46) that she is entitled to a severance in said case from the remaining appellants for the purpose of filing a petition for a re-hearing and/or a writ of certiorari.

Wherefore the appellant, Sarah Elizabeth Stringfellow, a widow, respectfully moves the court that an Order of Severance be entered to permit the appellant to file a separate petition for re-hearing and/or a petition for a writ of

certiorari in her cause of action and appeal wherein she seeks to recover damages for the death of her husband, Guy Stringfellow.

(Signed) Wm. C. McLean, Solicitor for Sarah Elizabeth Stringfellow, a Widow, Appellant.

[fol. 151] The appellant, Sarah Elizabeth Stringfellow, a widow, and as administratrix in all of the four remaining cases, same being Nos. 2730, 2731, 2732 and 2734, by her undersigned counsel, hereby waives notice of the above motion and consents to an order of severance as therein above prayed for.

(Signed) Wm. C. McLean, Solicitor for Sarah Elizabeth Stringfellow, a Widow and as Administratrix.

[fol. 152] State of Florida,
County of Hillsborough:

I hereby certify That on this 11th day of April, 1933, personally appeared before me the undersigned authority in and for said County and State, Wm. C. McLean, who being by me first duly sworn deposes and says, that he did on the 11th day of April, 1933, mail a true and correct copy of the attached and foregoing Motion for an Order Allowing a Severance, to Bussey, Mann & Barton, Esqs., St. Petersburg, Florida, Attorneys for the Appellee in the foregoing cause, by United States Mail, postage prepaid.

(Signed) Wm. C. McLean.

Sworn to and subscribed before me this the 11th day of April, 1933. (Signed) Joseph F. Miyares, Notary Public, State of Florida at Large. (Seal.)

[fol. 153] [File endorsement omitted]

In United States Circuit Court of Appeals for the Fifth Circuit

[Title omitted]

Petition of Appellant for Rehearing—Filed April 17, 1933

The undersigned, your petitioner, in her own right as widow, plaintiff in Case No. 2733 in the District Court, and

one of the appellants in the above styled cause, respectfully submits that she has been aggrieved by an opinion of Your Honors rendered herein on the 31st day of March, 1933, insofar as the same affects her action against the appellee for the injury and death of her husband, in the respects hereinafter set forth, and prays for a re-hearing of said matter insofar as her separate action is concerned, specifying the following grounds to be relied upon:

1. The failure of Guy Stringfellow to exercise "the care and caution which a reasonably prudent man would have displayed" does not bar a recovery under Section 7052, Compiled General Laws of Florida, 1927, when it appears from the holding of the Court that the jury could reasonably have found that the railroad company also failed to exercise "all ordinary and reasonable care and diligence" [fol. 154] by running its train "through a populous community without warning or at a speed so great that it could not have been stopped within less than 100 yards; especially if because of a strong head wind it was made difficult for those using the street intersection to hear a train approaching from the south."

2. Under the holding of the prevailing opinion negligence of the railroad company could reasonably have been found by the jury to have contributed in some degree to the death of Guy Stringfellow to warrant a verdict for appellant under Section 7052, Compiled General Laws of Florida, 1927.

3. It is for the jury to say whether the defendant company "exercised all ordinary and reasonable care and diligence" necessary to relieve it from liability under Section 7051 and 7052, Compiled General Laws of Florida, 1927, where there was evidence tending to prove that the defendant company ran its train through a populous community without warning, or at a negligent and dangerous rate of speed.

4. It would appear from the opinion of the Court entered on the 31st day of March, 1933, that its conclusion and judgment is based upon a construction of Section 7052 Compiled General Laws of Florida, 1927, in conflict with and contrary to the decisions of the Supreme Court of the

State of Florida construing said statute in the following recent cases:

Seaboard Air Line Railway Company v. Watson, 137 So. 719 (Decided November 12, 1931); Appeal dismissed November 7, 1930, — U. S. —, 77 L. Ed. 68;

Florida East Coast Railway Co. v. Townsend, 140 So. 196, 198; 142 So. 909; 143 So. 445.

5. The prevailing opinion of the Court is contrary to [fol. 155] and in conflict with the former opinion of this Court construing Section 7052 Compiled General Laws of Florida, 1927, in the case of:

Claughton v. Atlantic Coast Line Railroad Co., 47 Fed. (2) 679.

Wherefore petitioner respectfully urges that a rehearing may be granted her in her action for the death of her husband; and that the mandate of this Court in that action may be stayed pending the disposition of this petition.

Respectfully submitted.

Sarah Elizabeth Stringfellow, by Wm. C. McLean, Her Attorney.

I, Wm. C. McLean, of Tampa, Hillsborough County, Florida, an attorney regu-*ra*ly admitted to practice in the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that in my opinion the foregoing petition for re-hearing in the case of Sarah Elizabeth Stringfellow, a widow, v. Atlantic Coast Line Railroad Company, a corporation, embraced in No. 6617, is well founded in point of law and that the same is not presented for the purpose of creating a delay.

This the 14th day of April, A. D. 1933.

Wm. C. McLean.

STATE OF FLORIDA,
County of Hillsborough:

I hereby certify that on this 14th day of April, 1933, before me, the undersigned authority in and for said State [fol. 156] and County, personally appeared Wm. C. McLean, who being by me first duly sworn, deposes and says that he did on the 14th day of April, A. D. 1933 forward

a true and correct copy of the above and foregoing petition for re-hearing by United States mail, postage prepaid, to Messrs. Bussey, Mann & Barton, attorneys at Law, St. Petersburg, Florida, attorneys for appellee.

Wm. C. McLean.

Sworn to and subscribed before me this the 14th day of April, 1933. Claribel S. Hicks, Notary Public, State of Florida at Large. (Seal of Claribel S. Hicks, Notary Public, State of Florida at Large.)

[fol. 157] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

[Title omitted]

PETITION OF APPELLEE FOR REHEARING—Filed April 18, 1933

To the United States Circuit Court of Appeals for the Fifth Circuit and the judges thereof:

The Atlantic Coast Line Railroad Company, a corporation, appellee, above named, believing that this Court in [fol. 158] its opinion and decision filed March 31, 1933, reversing and remanding said cause, has, by apparent mistake, overlooked and failed to consider certain material facts conclusively shown in the record, and the law pertaining thereto, prays that a rehearing of said matters be granted and ordered by the Court, upon the grounds hereinafter stated:

(1) On page 3 of the printed decision of this Court, it is said:

"The fireman testified that he saw appellant's husband drive upon the crossing about sixty feet in front of the engine, and that he called to the engineer who immediately put on the emergency brakes."

This is erroneous in that the fireman testified as follows:

"I was sitting on my side and I got down about thirty or forty feet from the crossing and saw this car coming up about the same distance from the crossing and went right

in front of the engine, and I jumped up and hollered to him to put on the emergency."

"I hollered to the engineer, warning him of the danger when the engine was about thirty to sixty feet from the crossing."

Again, on cross-examination, the witness testified:

"I told the engineer when we were about thirty to sixty feet before we got to the crossing. * * * When I first saw the automobile, it was about the same distance that we were from the track. I couldn't tell whether the automobile was going to stop."

(Record, page 93.)

[fol. 159] In other words, this witness testified that when he, the fireman, was between thirty and sixty feet from the point where the accident happened, he saw this automobile coming, and it was about the same distance, to-wit, thirty to sixty feet from the point of the accident. No witness testified that the automobile was on the crossing sixty feet in front of the engine.

(2) On page 3 of the printed decision of the Court, it is said:

"but the testimony as a whole leaves it uncertain whether he stopped or slackened speed when he arrived at the crossing, and whether he actually saw the train."

There is not a line of evidence that he stopped.

The plaintiff introduced one person, who claimed to be an eye witness, a Mrs. Crystal Towne, who said she was about 150 feet from the railroad track, and says that she saw the train strike the car (Record, page 86). This witness did not state, even by any inference, that the automobile stopped, or that she saw it, other than at the very moment of the collision.

The other eyewitnesses were—Mrs. Mabel Seeley, who testified that he did not stop, but that he slackened his speed a little, and he then speeded up across the tracks (Record, pages 97-98).

E. H. Baldwin testified, on direct examination, that he drove right in front of the train, and that as well as he can

tell he did not slow up, or stop, from the time he first saw him. On cross examination, he testified:

"I know he slackened the speed of his car some, but not very much."

(Record, pages 105-106.)

[fol. 160] Ray Outman, a negro, and an eyewitness, testified that he saw the automobile before it got to the track, and that it did not stop or slacken its speed before it went upon the track (Record, page 107).

The fireman, A. R. White, testified that from the time he first saw the automobile until the time of the crash, it did not slow up, or stop, or change its speed any (Record, page 93).

Therefore, it cannot be said to be uncertain as to whether or not he stopped. The evidence is uncontradicted that he did not stop.

(3) On page 4, of the printed decision, it is said:

"It is appellee's contention that the presumption of its negligence, * * * was overcome by further proof which disclosed that those injuries were caused solely by the negligence of the injured persons."

The appellee's contention was not that the injuries were caused by the negligence of the injured persons, which we take to mean all of the injured persons, but was solely the result of the negligence of the driver of the car.

(4) On page 6, of the printed decision of this Court, it is said, in differentiating the case of Covington against the Seaboard Air Line Railroad, that:

"It does not appear in this case that the driver was racing with the train in an attempt to pass ahead of it over the crossing."

The plaintiff introduced one witness, as before stated, who saw only the actual impact, but the defendant introduced a witness, Mabel L. Seeley, who testified with respect thereto as follows:

[fol. 161] "There is a stop sign in the middle of Scotland Street to the west of the railroad track. * * * He did not stop. He slackened his pace a little bit."

She was then asked:

"Q. State whether or not the driver of this automobile looked in the direction from which the train was coming, before he entered upon the tracks.

A. Yes, it appeared to me that he did. He looked toward the train and then made a dash right across.

Q. After he looked in the direction from which the train was approaching, what, if anything, did he do?

A. He seemed to speed up to cross the tracks."

(Record, pages 97-98.)

And this testimony was corroborated, in part at least, by the witnesses, White and Outman.

It is true, no witnesses testified in exact words that he was racing with the train, but every logical deduction to be gathered from this testimony is that he was so doing, because "he looked toward the train and then speeded up." Of course, he is charged with having seen what was there, and from the fact that he speeded up, it is clearly inferable that he saw the train and was, in fact, racing. Certainly the facts of racing with a train in this case more clearly appeared than in the Covington case.

(5) The Court evidently overlooked the fact that all of the parties met death in the same accident, and if the negligence of the father was the sole proximate cause of his death, it must, likewise, be the sole proximate cause of the death of the children.

[fol. 162] (6) In the dissenting opinion of Mr. Justice Hutcheson, on page 14 of the printed decision, it is said:

"The opinion of the majority advances a third view as maintainable in Florida, that there are degrees of contributory negligence, and that a driver may be so contributorily negligent as that though the recovery of those in the car with him will not be barred because his negligence is not the sole but a concurring proximate cause of the injury, his own recovery will be."

We do not understand the majority take this position. It is our view from the opinion, that in so far as the driver's case is concerned no recovery could be had, because his negligence was the sole proximate cause of the injury. The

cases cited in the majority opinion, on page five (5) of the printed decision, as sustaining their view, were all cases dealing with sole proximate cause and not contributory negligence.

If it was meant to announce what Mr. Justice Hutcheson is pleased to term a "third view," as maintainable in Florida, then it must be upon the assumption that Section 7052 of the Compiled General Laws of Florida for 1927, as construed in the case of Atlantic Coast Line Railroad Company v. Watkins, 121 Southern, page 95, cannot be regarded as relating merely to practice or to a form or mode of proceeding, but is part of the substantive law and "cuts deep into the right observed at common law," and also that the question involved is not controlled by the federal statute with respect to "Laws of States or Rules of Decision" (U. S. C., Title 28, Paragraph 725).

This construction or holding, it would appear, is amply [fol. 163] justified by the opinion of Mr. Chief Justice Hughes, rendered in the case of Herron v. Southern Pacific, 283 U. S. 92, 75 Law Ed. 857. However, it would appear from the opinion of the majority of the Court, in discussing Section 7052 of the Compiled General Laws of Florida for 1927, that the Court did not so hold.

(7) The position of appellee was, and is, that the evidence shows that this accident was the result of negligence of the driver of the vehicle, which was the sole proximate cause, and, being the sole proximate cause of the accident, the death of all the parties resulting therefrom is barred, and that, therefore, the action of the lower court in all respects should be affirmed.

It is respectfully prayed and submitted that this petition to rehear should be granted and an allowance of reargument had—in view of the divergent views of the parties and the Court.

James R. Bussey, Sam H. Mann, Jr., McKinney Barton, Attorneys for Appellee.

I, McKinney Barton, one of the counsel for the above-named appellee, do hereby certify that the foregoing peti-

tion for a rehearing of this cause is presented in good faith and not for delay.

McKinney Barton, of Counsel for Appellee.

[fol. 164] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

[Title omitted]

OPPOSITION OF APPELLEE TO MOTION FOR SEVERANCE—Filed April 19, 1933

Comes now the Appellee in the above-entitled cause, Atlantic Coast Line Railroad Company, by its undersigned solicitors, and in opposition to the motion of the Appellant for an order of severance herein, says:

1. It admits the averments contained in Paragraphs 1, 2, 3, 4, and 5 of said motion.

6. In answering paragraph 6 of said motion the Appellee herein has prepared and has this day filed its petition to rehear in accordance with the Rules of this Court, and can see no reason why the Appellant, Sarah Elizabeth Stringfellow, widow, plaintiff in cause No. 2733, if she so desires, may not, likewise, file a petition for rehearing, insofar as her rights are affected, without an order of severance.

This Appellant will have no objection to the granting of an order of severance after the petitions to rehear have been acted upon by this Honorable Court, but is — the opinion that such severance should not be had until the Court does act upon such petitions. This appellee, to be entirely frank with the Court, is of the honest opinion that the cases should be affirmed as a whole or reversed as a whole, and if the Court, upon rehearing, should take this course, there can be no necessity for an order of severance, and for such an order to be entered at this time before the Court acts upon the petitions to rehear might cause either, or both, the [fol. 165] Appellee and Appellant to prepare and file two separate petitions for Certiorari to the Supreme Court of the United States, as intimated in Appellant's motion. Therefore, Appellee prays the Court that said motion for

severance be reserved by the Court until said petitions are filed and acted upon by the Court, or at least until the expiration of the time in which said parties have, under the Rules of this Court, to file such petitions.

7. Answering Paragraph 7 of said motion, Appellee admits that the rights of the Appellant in each of the four remaining cases are separate from the rights of Sarah Elizabeth Stringfellow, a widow, in her own right seeking damages for the death of her husband, Guy Stringfellow, Case No. 2733, but denies at this time that she is entitled to a severance of the case wherein she seeks to recover damages for the death of her husband.

Wherefore appellee prays the Court that said order of severance be denied at this time, or at least the action of the Court be reserved until the filing by the parties and the acting upon by the court of the Petitions to Rehear.

Respectfully submitted.

Jas. R. Bussey, Sam H. Mann, Jr., McKinney Barton, Solicitors for Appellee, the Atlantic Coast Line Railroad Company.

[fol. 166] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER GRANTING MOTION OF APPELLANT FOR SEVERANCE—April 21, 1933

Now on this 21st day of April, 1933, this cause came on to be heard upon the motion of Sarah Elizabeth Stringfellow, a widow, appellant in case No. 2733 wherein she seeks in her own right as widow to recover damages for the death of her husband, Guy Stringfellow, for an Order of Severance in said cause, and upon consideration thereof

It is found by the Court that appellant in the remaining causes has waived notice of said motion and has consented thereto, and

It is further found that Sarah Elizabeth Stringfellow, a widow, in Case No. 2733, has indicated her desire to file a petition in the Supreme Court of the United States for a

writ of certiorari to this Court; and that she is entitled to a severance from her co-appellants in this cause;

It is further found that the rights of appellant, Sarah Elizabeth Stringfellow, a widow, in her own right as widow seeking to recover damages against the appellee, Atlantic Coast Line Railroad Company, for the death of her husband, Guy Stringfellow, are so separate from the rights of her co-appellants that

It is therefore ordered that she be and she is hereby granted a severance from all of her co-appellants for the purpose of filing a petition in the Supreme Court of the United States for a writ of certiorari.

[fol. 167] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER DENYING PETITION FOR REHEARING OF APPELLANT—April 21, 1933

As neither of the judges who concurred in the judgment of the court in the above numbered and entitled cause is of opinion that appellant's petition for rehearing should be granted, it is ordered that the said petition be and the same hereby is denied.

[fol. 168] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER DENYING PETITION FOR REHEARING OF APPELLEE—April 21, 1933

It is ordered by the Court that appellee's petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 169] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

[Title omitted]

MOTION FOR STAY OF MANDATE—Filed April 27, 1933

Now comes Sarah Elizabeth Stringfellow, a widow, one of the appellants in the above entitled cause, plaintiff in

Case No. 2733 in the District Court wherein she seeks damages against the appellee for the death of her husband, and respectfully moves this Honorable Court to stay the mandate in the above entitled action insofar as the same affects her said suit as widow for the death of her husband and not permit the same to be issued out of said cause until the further order of the court, on the ground and for the reason that appellant in her own right as widow as aforesaid expects and intends in good faith, within the time allowed by law, to apply to the Supreme Court of the United States of America by petition for a review on writ of certiorari of the decision and judgment rendered in favor of appellee and against the appellant, as widow, as aforesaid, in the above entitled action; and

[fol. 170] Appellant as widow as aforesaid, further shows to the Court that she expects and intends, in good faith, to file such petition for a writ of certiorari in forma pauperis in accordance with the statute in such cases made and provided.

Appellant further shows to the court that this Honorable Court did on the 21st day of April, 1933, enter an order granting appellant as widow as aforesaid, an order of severance in said cause from all of her co-appellants for the purpose of filing a petition in the Supreme Court of the United States for a writ of certiorari.

Wherefore appellant, as widow as aforesaid, prays that the court make and enter an appropriate order herein staying the issuance of the mandate in the above entitled action insofar as the same affects her separate action as widow for the death of her husband, until the further order of the court.

(Signed) Wm. C. McLean, Attorney for Sarah Elizabeth Stringfellow.

The undersigned, as attorneys of record for the Atlantic Coast Line Railroad Company, a corporation, appellee in the above and foregoing cause, do hereby acknowledge service of a copy of the above and foregoing motion and consent thereto.

This the 25th day of April, 1933.

(Signed) Jas. R. Bussey, Sam H. Mann, Jr., McKinney Barton.

[fol. 171] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER STAYING MANDATE

On consideration of the application of the appellant in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellant to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 27th day of April, 1933.

(Signed) N. P. Bryan, United States Circuit Judge.

[fol. 172] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

MOTION TO STAY MANDATE—Filed April 27, 1933

Comes now the Appellee above named, and respectfully moves this Honorable Court to stay the mandate in the above-entitled consolidated action and not permit the same to be issued out of said cause until the further order of the [fol. 173] Court, on the ground and for the reason that appellee expects and intends, in good faith, within the time allowed by law, to apply to the Supreme Court of the

United States of America by petition for a review on writ of certiorari — the decision and judgment rendered in favor of appellant and against appellee in the above-entitled action; and

Appellee further shows to the Court that it is ready, able and willing to make a good and sufficient bond, conditioned as provided by law, in said cause.

Wherefore appellee prays that the court make and enter an appropriate order herein staying the issuance of the mandate in the above-entitled action until the further order of the court, and that the court fix the amount of the bond required of appellee, and that it be given a reasonable time in which to make, execute and file said bond.

(Signed) Jas. R. Bussey, Sam H. Mann, Jr., McKinney Barton, Attorneys for Appellee, Atlantic Coast Line Railroad Company.

STATE OF FLORIDA,
County of Hillsborough, ss:

We, Campbell & McLean, attorneys for Appellant, in the above-entitled cause, hereby acknowledge receipt of copies of the above said motion and enter our consent to the entry of an order as prayed for in said motion.

(Signed) Wm. C. McLean, Doyle Campbell, Attorneys for Appellant.

[fol. 174] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER STAYING MANDATE

On consideration of the application of the appellee in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellee to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the

certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 27th day of April, 1933.

(Signed) N. P. Bryan, United States Circuit Judge.

[fol. 175] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1933

No. 71

ORDER ALLOWING CERTIORARI—Filed October 9, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1933

No. 95

ORDER ALLOWING CERTIORARI—Filed October 9, 1933

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